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

CFR PARTS AFFECTED IN THIS ISSUE

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

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Presidential Documents

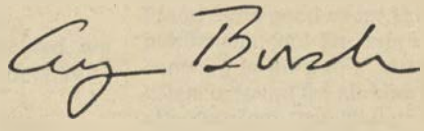
Title 3—

The President

Executive Order 12773 of September 26, 1991

Amending Executive Order No. 10480

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Defense Production Act of 1950, as amended (50 U.S.C. 2601 *et seq.*) ("Act"), and in order to transfer the responsibilities of the General Services Administration as authorized under the Act, it is hereby ordered that section 303 of Executive Order No. 10480 is amended by deleting "Administrator of General Services" and inserting "Secretary of Defense" in lieu thereof and that section 604 of Executive Order No. 10480 is amended by deleting "General Services Administration" and inserting "De partment of Defense" in lieu thereof and by deleting "Administrator of General Services" and inserting "Secretary of Defense" in lieu thereof.



THE WHITE HOUSE,
September 26, 1991.

[FR Doc. 91-23674
Filed 9-27-91; 10:39 am]
Billing code 3195-01-M

Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 318 and 354

[Docket No. 91-138]

RIN 0579-AA43

User Fees—Hawaii and Puerto Rico; Postponement of Effective Date

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule; postponement of effective date.

SUMMARY: We are postponing until further notice the effective date for the final rule published on April 23, 1991 (56 FR 18496–18502, Docket Number 91–054). Although previously scheduled to become effective on August 1, 1991, a postponement of the effective date until October 1, 1991, was published on August 1, 1991 (56 FR 36724, Docket Number 91–113). The rule would establish user fees for agricultural quarantine and inspection services we provide in connection with the departure of passengers from Puerto Rico and Hawaii on certain domestic airline flights.

EFFECTIVE DATE: September 30, 1991, APHIS is postponing until further notice the effective date of the final rule published on April 23, 1991 (56 FR 18496–18502, Docket Number 91–054). The original effective date of August 1 was previously postponed until October 1, 1991, by publication of a document on August 1, 1991 (56 FR 36724, Docket Number 91–113).

FOR FURTHER INFORMATION CONTACT: Charles A. Havens, Chief Operations Officer, Port Operations, PPQ, APHIS, USDA, Federal Building, room 635, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8295.

SUPPLEMENTARY INFORMATION:

Background

On April 23, 1991 (56 FR 18496–18502, Docket Number 91–054), we published a final rule under authority of 31 U.S.C. 9701 establishing user fees for agricultural quarantine and inspection (AQI) services provided in connection with the departure of passengers from Puerto Rico and Hawaii on certain domestic airline flights. The rule was scheduled to become effective August 1, 1991.

The August 1 date was postponed until October 1, 1991, by Docket Number 91–113 (56 FR 36724) because we had determined that affected parties required additional time to address fee implementation concerns.

Because these implementation concerns have not yet been resolved, we are postponing the October 1 effective date.

Accordingly, the October 1, 1991, effective date for the amendments to 7 CFR parts 318 and 354 published on August 1, 1991, at 56 FR 36724 is postponed until further notice.

Authority for Part 318: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, 164a, 167; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(c).

Authority for Part 354: 7 U.S.C. 2260, 21 U.S.C. 136 and 136a; 31 U.S.C. 9701, 49 U.S.C. 1741; 7 CFR 2.17, 2.51, and 371.2(c).

Done in Washington, DC, this 25th day of September 1991.

Robert Melland,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91–23445 Filed 9–27–91; 8:45 am]
BILLING CODE 3410–34–M

Federal Crop Insurance Corporation

7 CFR Part 400

[Doc. No. 0048s]

General Administrative Regulations; Information Collection Requirements Under the Paperwork Reduction Act: OMB Control Numbers

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby revises and reissues subpart H in part 400, chapter IV, title 7 of the Code of Federal Regulations, listing the control numbers assigned by the Office of Management and Budget (OMB) to information collection requirements contained in all regulations issued by FCIC. The intent of this rule is to update the list of approved FCIC forms and list control numbers assigned by OMB to information collection requirements contained on such forms.

EFFECTIVE DATE: September 30, 1991.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This rule related to internal agency management. Therefore, pursuant to 5 U.S.C. 553, it is found upon good cause that notice and public comment are impracticable and contrary to the public interest, and good cause is found for making this rule effective less than 30 days after publication in the **Federal Register**.

Further, since this rule relates to internal agency management it is exempt from the provisions of Executive Order 12291. Lastly, this action is not a major rule as defined in Public Law 96–354, the Regulatory Flexibility Act, and thus is exempt from the provisions of the Act.

The OMB regulations (5 CFR 1320; 48 FR 13666, March 31, 1983), titled "Controlling Paperwork Burdens on the Public", requires FCIC to publish currently valid OMB control numbers for each collection of information requirement contained in its regulations. These numbers must be published in a manner that will ensure codification into the Code of Federal Regulations.

FCIC hereby revises and reissues 7 CFR part 400, Subpart H, to update the listing of the information collection control numbers issued by OMB with respect to FCIC's forms.

List of Subjects in 7 CFR Part 400

Administrative practice and procedure; Information collection requirements; OMB control numbers.

Final Rule

In accordance with the provisions of 5 CFR 1320, and the Paperwork Reduction Act, Public Law 96–511 (44 U.S.C., chapter 35), the Federal Crop Insurance Corporation hereby revises and reissues the General Administrative Regulations;

Information Collection Requirements Under the Paperwork Reduction Act: OMB Control Numbers, found at 7 CFR part 400, subpart H, effective upon publication in the **Federal Register.**

PART 400—GENERAL ADMINISTRATIVE REGULATIONS

Subpart H of part 400 is revised to read as follows:

Subpart H—Information Collection Requirements Under the Paperwork Reduction Act; OMB Control Numbers

Sec.

Subpart H—Information Collection Requirements Under the Paperwork Reduction Act; OMB Control Numbers

Authority: 5 U.S.C. 1320, Pub. L. 96–511 (44 U.S.C., chapter 35).

§ 400.65 Purpose.

This subpart collects and displays the control numbers assigned to information collection requirements of the Federal Crop Insurance Corporation (FCIC) by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980 (Pub. L. 96–511). FCIC intends that this subpart comply with the requirements of section 3507(f) of the Paperwork Reduction Act, which requires that agencies display a current control number assigned by the Director of OMB for each agency information collection requirement.

§ 400.66 Display.

(a) Crop Insurance Regulations promulgated by FCIC and contained in 7 CFR part 400 *et seq.*, contain the following statement:

OMB Control Numbers

The OMB control numbers are contained in subpart H of part 400, title 7 CFR.

(b) Specific report title and agency forms approved by OMB are as follows:

FCI No., form title, OMB No.	Expiration date
FCI–553	1–31–92
Unit Division Option 0563–0001	
FCI–19	1–31–92
Crop Insurance Acreage Report 0563–0001	
FCI–12	3–31–93
Crop Insurance Application 0563–0003	
FCI–63	1–31–92
Claims for Citrus Indemnity 0563–0007	
FCI–63	1–31–92
Claims for Raisin Indemnity 0563–0007	
FCI–74	1–31–92
Field Inspection And Claim For Indemnity 0563–0007	
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Application For Assignment Of Indemnity 0563–0014	
FCI–21	5–31–92
Transfer Of Right To An Indemnity 0563–0014	
FCI–74–B	5–31–92
Cotton Claims For Indemnity 0563–0014	
FCI–554	5–31–92
Macadamia Orchard Inspection Report 0563–0015	
FCI–63–A	5–31–92
Adjuster's Florida Citrus Worksheet 0563–0016	
FCI–74–A	1–31–92
Adjuster's Apple Worksheet 0563–0016	
FCI–74–A	5–31–92
Beans And Peas Appraisal Worksheet 0563–0016	
FCI–74–A	5–31–92
Citrus Appraisal Worksheet (Az-Ca Citrus) 0563–0016	
FCI–74–A	5–31–92
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Fig Appraisal Worksheet 0563–0016	
FCI–74–A	5–31–92
Flax Appraisal Worksheet 0563–0016	
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FCI–74–A	1–31–92
Peanut Appraisal Worksheet 0563–0016	
FCI–74–A	1–31–92
Pear Appraisal Worksheet 0563–0016	
FCI–74–A	1–31–92
Peppers/Fresh Tomatoes Appraisal Worksheet (Planting To Fruit Set/ Replant) 0563–0016	
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Fresh Plums Appraisal Worksheet 0563–0016	
FCI–74–A	1–31–92
Potato Appraisal Worksheet 0563–0016	
FCI–74–A	1–31–92
Prune Appraisal Worksheet 0563–0016	
FCI–74–A	1–31–92
Safflower Appraisal Worksheet 0563–0016	
FCI–74–A	1–31–92
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Hail Damage Appraisal Worksheet (Corn And Grain Sorghum) 0563–0016	
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FCI No., form title, OMB No.	Expiration date
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High-Risk Land Exclusion Option 0563-0018	
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Apple Fresh Fruit Option 0563-0020	
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Corn Silage Option 0563-0020	
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Potato Crop Insurance Policy—Processing Potato Quality Option 0563-0020	
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Potato Crop Insurance Policy—Frost/Freeze Potato Option 0563-0020	
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Planting Record—Peppers 0563-0022	
FCI-529	6-30-94
Planting Record—Tomatoes 0563-0022	
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Late Planting Agreement 0563-0023	
FCI-551	6-30-94
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Statement of Facts 0563-0027	
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Macadamia Tree Worksheet 0563-0028	
FCI-74-A	6-30-94
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Request to Exclude Hail and Fire (Limited Crops) 0563-0032	
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FCI-74-C	8-31-94
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Done in Washington, DC on August 29, 1991.

James E. Cason,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 91-23336 Filed 9-27-91; 8:45 am]

BILLING CODE 3410-08-M

Agricultural Marketing Service

7 CFR Part 959

[Docket No. FV-91-422]

Onions Grown in South Texas; Expenses

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures under Marketing Order No. 959 for the 1991-92 fiscal period. Authorization of this budget enables the South Texas Onion Committee (committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATES: August 1, 1991, through July 31, 1992.

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

SUPPLEMENTARY INFORMATION: This rule is effective under Marketing Agreement No. 143 and Order No. 959 (7 CFR part 959), regulating the handling of onions grown in South Texas. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

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

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

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

There are approximately 34 handlers of South Texas onions under this marketing order, and approximately 47 growers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) 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 South Texas onion producers and handlers may be classified as small entities.

The budget of expenses for the 1991-92 fiscal period was prepared by the South Texas Onion Committee, the agency responsible for local administration of the marketing order.

and submitted to the Department of Agriculture for approval. The members of the committee are handlers and producers of South Texas onions. They are familiar with the committee's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget.

The committee, in a mail vote which was completed on August 5, 1991, unanimously recommended a 1991–92 budget of $91,237 for personnel, office, and travel expenses, the same as last year. The assessment rate and funding for the research and promotion projects will be recommended at the committee's organizational meeting this fall. Funds in the reserve at the beginning of the 1991–92 fiscal period, estimated at $348,165, were within the maximum permitted by the order of two fiscal periods' expenses. These funds will be adequate to cover any expenses incurred by the committee prior to the approval of the assessment rate.

Since no assessment rate is being recommended at this time, no additional costs would be imposed on handlers. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

A proposed rule was published in the **Federal Register** on September 3, 1991 (56 FR 43559). This document contained a proposal to add § 959.232 to authorize expenses for the committee. That rule provided that interested persons could file comments through September 13, 1991. No comments were filed.

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

It is further found that good cause exists for not postponing the effective date of this section until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because the 1991 fiscal period began on August 1, 1991, and the committee needs approval to pay its expenses which are incurred on a continuous basis.

List of Subjects in 7 CFR Part 959

Marketing agreements, Onions, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 959 is hereby amended as follows:

PART 959—ONIONS GROWN IN SOUTH TEXAS

1. The authority citation for 7 CFR part 959 continues to read as follows:

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

2. A new § 959.232 is added to read as follows:

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

§ 959.232 Expenses.

Expenses of $91,237 by the South Texas Onion Committee are authorized for the fiscal period ending July 31, 1992. Unexpended funds may be carried over as a reserve.

Dated: September 24, 1991.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91–23407 Filed 9–27–91; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 981

[FV–91–290FR]

Handling of Almonds Grown in California; Third Revision of the Salable and Reserve Percentages for the 1990–91 Crop Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule finalizes an interim final rule which revised the salable and reserve percentages for California almonds received by handlers during the 1990–91 crop year. The 1990–91 crop year commenced on July 1, 1990. The Almond Board of California (Board), the agency which locally administers the almond marketing order, unanimously recommended at its May 10, 1991, meeting, the revision of the salable and reserve percentages while keeping the export percentage the same at 0 percent. In the interim final rule, the salable percentage was increased from 80 to 93 percent, and the reserve percentage was decreased from 20 to 7 percent. This final rule is authorized under the marketing order for almonds grown in California. This action is necessary to provide a sufficient quantity of almonds to meet trade demand and carryover needs.

EFFECTIVE DATE: September 30, 1991.

FOR FURTHER INFORMATION CONTACT: Sonia N. Jimenez, Marketing Specialist, F&V, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC, 20090–6456; telephone: (202) 475–5992.

SUPPLEMENTARY INFORMATION: This final rule is issued under marketing agreement and Order No. 981 (7 CFR part 981), both as amended, hereinafter referred to as the order, regulating the handling of almonds grown in California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

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

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this 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 105 handlers of almonds who are subject to regulation under the order and approximately 7,000 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) 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 almonds may be classified as small entities.

This action finalizes an interim final rule which decreased the quantity of California almonds which handlers must withhold from normal, competitive markets to meet their reserve obligations under the order for the 1990–91 crop year. The quantity of almonds which handlers must withhold to meet their reserve obligations was decreased from 20 percent to 7 percent of marketable almonds received by handlers for their own accounts during the 1990–91 crop year. The salable percentage of the crop, which could be sold by handlers in any market, was increased from 80 percent to 93 percent. Therefore, the interim final rule relaxed restrictions on handlers and this action does not impose any additional burden or costs on handlers.

The salable, reserve, and export percentages for the 1990–91 almond crop were first established in a final rule published in the **Federal Register** on September 21, 1990 (55 FR 38793). The

initial salable percentage was 65 percent, the reserve percentage was 35 percent, and the export percentage was 0 percent. These percentages were established on the basis of two Board recommendations, on June 27 and July 25, 1990, pursuant to §§ 981.47 and 981.49 of the almond marketing order. The Board based its recommendations on the then current estimates of marketable supply and combined domestic and export trade demand for the 1990–91 crop year.

However, on December 3, 1990, the Board met to review the salable and reserve percentages that had been established for the 1990–91 crop year and the supply and demand estimates from which those percentages were derived. At that meeting, the Board unanimously recommended revising the salable and reserve percentages. Pursuant to § 981.48 of the almond marketing order, the Board arrived at its recommendation for revising the salable and reserve percentages by reviewing its estimates of marketable supply and combined domestic and export trade demand for the 1990–91 crop year. Subsequently, an interim final rule revising the salable percentage from 65 to 70 percent and revising the reserve percentage from 35 to 30 percent was published in the **Federal Register** on February 11, 1991 (56 FR 5308).

At its February 21, 1991, meeting the Board again reviewed the 1990–91 crop year salable and reserve percentages and the supply and demand estimates from which those percentages were derived. At that meeting, pursuant to § 981.48 of the almond marketing order, the Board unanimously recommended to further revise the almond salable and reserve percentages for the 1990–91 crop year. A second interim final rule, which further revised the salable percentage from 70 to 80 percent and further revised the reserve percentage from 30 to 20 percent, was published in the March 19, 1991 (56 FR 11499) issue of the **Federal Register**. The March 19 interim final rule revised the February 11 interim final rule by further relaxing restrictions on almond handlers. The comments on the February 11 and the March 19 interim final rules were subsequently addressed, and the March 19 interim final rule was finalized in a rule published in the **Federal Register** on May 31, 1991 (56 FR 24678).

The Board made its final review of the 1990–91 crop year salable and reserve percentages at its May 10, 1991, meeting. At that meeting, pursuant to § 981.48 of the almond order, the Board unanimously recommended to increase the salable percentage from 80 percent to 93 percent and to decrease the reserve percentage from 20 percent to 7 percent. A third interim final rule was published in the **Federal Register** on June 28, 1991 (56 FR 29559). Comments on the rule were invited until July 29. One comment partially against the rule was received from Cal-Almond, Inc. (Cal-Almond).

Cal-Almond objected that the interim final rule authorized an increase in the salable percentage to only 93 percent of the almond crop grown during the 1990–91 crop year. Cal-Almond stated that the 7 percent remaining should be included in the salable percentage.

Cal-Almond claims that less than half of the 7 percent of reserve almonds had been disposed into the eligible non-competitive outlets. The commenter also stated that the Department has bought relatively few almonds for the school lunch program, that reported sales of reserve almonds for airlines packages are false, and that almost 25 percent of the reserve almonds have been sold into cattle feed and almond oil, rendering no return to the growers. Finally, Cal-Almond claims that the Department has to pay compensatory damages for any economic harm suffered as a result of any illegal reserve.

In fact, the quantity of almonds disposed of to non-competitive outlets accounts for more than 50 percent of the 7 percent reserve as indicated in the Almond Industry Position Report of June 1991. Also, there is a surplus of almonds in the market. If more than 93 percent of the reserve almonds is released, an oversupply of almonds will occur.

The amount of almond butter bought for the school lunch program has been almost 20 million pounds. Approximately 8 million pounds of almond butter was purchased since the June 1991 Almond Industry Position Report was issued. This amount is about 40 percent of the total reserve almonds for the 1990–91 crop year. This amount does not include butter that has been, or may be, sold to non-government organizations. Also, the amount of almonds used for airline snack packs as of June 1991 was more than 3 million pounds, and the amount used for animal feed or oil was far less than 25 percent of the reserve.

Furthermore, while reserve almonds would not likely be sold at prices comparable with salable almonds, the improved prices received for the salable portion of the crop and the improved stability of the market for 1990–91 crop year almonds compensate for this reduction.

Finally, no court has ever ordered the payment of any damages as a result of any allegedly illegal almond reserve.

The remainder of the comment merely offered unsupported opinions regarding the economics of the marketing order.

Therefore, for the reasons stated, the above comment in opposition to the finalization of the interim final rule is denied.

The purpose of the increase in the salable percentage is to make a larger quantity of California almonds available for normal domestic markets in order to meet higher adjusted trade demand needs during the remainder of the 1990–91 crop year. The 1991–92 crop has been estimated at 450 million kernelweight pounds by the California Agriculture Statistics Service. In recent years, the almond industry has shipped well over 450 million kernelweight pounds annually. Therefore, the Board recommended increasing the salable percentage from 80 percent to 93 percent for the 1990–91 crop year to increase the carryover available to meet 1991–92 trade demand needs. Finally, the Committee's recommendation to revise the salable and reserve percentages benefits producers by increasing their returns and benefits handlers by relaxing restrictions and not imposing additional burden or costs on handlers, such as costs of storing reserve almonds.

The estimates used by the Board on May 10 in reviewing the salable and reserve percentages and in arriving at its latest recommendation are shown below. The Board's July 25, 1990, December 3, 1990, and February 21, 1991, estimates are shown as a basis for comparison.

MARKETING POLICY ESTIMATES—1990 CROP

[Kernelweight basis in millions of pounds]

	7/25/90 initial estimates	12/3/90 revised estimates	2/21/91 revised estimates	5/10/91 revised estimates
Estimated production:				
1. 1990 Production	655.0	655.0	655.0	655.0
2. Loss and exempt—4.0%	26.0	26.0	26.0	26.0
3. Marketable production	629.0	629.0	629.0	629.0
Estimated trade demand:				
4. Domestic	190.0	190.0	205.0	205.0
5. Export	375.0	375.0	410.0	410.0
6. Total	565.0	565.0	615.0	615.0
Inventory adjustment:				
7. Carryin 7/1/90	215.0	202.0	202.0	202.0
8. Desirable carryover 6/30/91	59.0	77.2	90.1	171.0
9. Adjustment (item 8 minus item 7)	(156.0)	(124.8)	(111.9)	(31.0)
Salable/reserve:				
10. Adjusted trade demand (item 6 plus item 9)	409.0	440.2	503.1	584.0
11. Reserve (item 3 minus item 10)	220.0	188.8	125.9	45.0
12. Salable Percentage (item 10 divided by item 3 × 100)	65%	70%	80%	93%
13. Reserve Percentage (100 percent minus item 12)	35%	30%	20%	7%

As the chart above illustrates, the Board's May 10 recommendation increased the desirable carryover from 90.1 million kernelweight pounds to 171.0 million kernelweight pounds. The desirable carryover is the quantity of salable almonds deemed desirable to be carried out on June 30, 1991, for early season shipment during the 1991–92 crop year until the 1991 crop is available for market. Incorporating this change in the trade demand calculations increased the adjusted trade demand from 503.1 million kernelweight pounds to 584.0 million kernelweight pounds, which is 93 percent of the 1990–91 crop.

Therefore, the interim final rule released an additional 13 percent of the crop to the salable category immediately, and the remaining 7 percent (45 million kernelweight pounds) of the marketable production from the 1990–91 crop will be withheld by handlers to meet their reserve obligations. Reserve almonds may be sold by the Board, or by handlers under agreement with the Board, to governmental agencies or charitable institutions or for diversion into almond oil, almond butter, animal feed, and other outlets which the Board finds are noncompetitive with existing normal markets for almonds.

The order permits the Board to include normal export requirements with domestic requirements in its estimate of trade demand when recommending the establishment of salable, reserve, and export percentages for any crop year. For the 1990–91 crop year, estimated exports are included in the trade demand. Thus, an export percentage of 0 percent was established by the final rule published in the **Federal Register** on September 21, 1990 [55 FR 38793], and reserve almonds are not eligible for export to normal export outlets. However, handlers may ship their salable almonds to export markets. The export percentage is not changed as a result of this action.

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

After consideration of all relevant matter presented, the Board's recommendation, the comment received, and other available information, it is found that the finalization of the June 28 interim final rule which revised § 981.237 so as to change the salable and reserve percentages for almonds during the crop year which began on July 1, 1990, to 93 percent and 7 percent, respectively, 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 this final action adopts, without modification, an interim final rule which relaxed restrictions and was effective on June 28, and handlers need no additional time to comply.

List of Subjects in 7 CFR Part 981

Almonds, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 981 is amended as follows:

PART 981—ALMONDS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 981 continues to read as follows:

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

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

2. Accordingly, the interim final rule revising § 981.237, which was published at 56 FR 29559 on June 28, 1991, is adopted as a final rule without change.

Dated: September 25, 1991.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91–23501 Filed 9–27–91; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 1137

[DA–91–016]

Milk in the Eastern Colorado Marketing Area; Order Suspending Certain Provisions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rule.

SUMMARY: This action continues the suspension of certain provisions of the Eastern Colorado milk marketing order. These provisions have been suspended for the last five years. This action suspends again for the months of September 1991 through February 1992 the limit on the period of automatic pool plant status for supply plants that met the shipping standards during a previous shipping season. The suspension of the "touch-base" requirement, which

provides that a member-producer's milk be received at least three times each month at a pool distributing plant to qualify the dairy farmer's milk for diversion, and the percentage limits on the amount of milk that a cooperative may deliver directly to manufacturing plants and remain pooled and priced under the order is extended for the months of September 1991 through August 1992. These actions were requested by a cooperative association representing producers supplying the market. The changes are necessary to prevent uneconomic shipments of milk. No views in opposition to the suspension were received and two letters supporting continuation of the suspension were received.

EFFECTIVE DATE: September 30, 1991.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 447–4829.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Suspension: Issued August 22, 1991; published August 27, 1991 (56 FR 42284).

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. This action lessens the regulatory impact of the order on certain milk handlers and tends to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

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

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and of the order regulating the handling of milk in the Eastern Colorado marketing area.

Notice of proposed rulemaking was published in the **Federal Register** on August 27, 1991 (56 FR 42284) concerning a proposed suspension of certain provisions of the order. Interested persons were afforded opportunity to file written data, views, and arguments thereon. Comments supporting the proposed action were filed by Western Dairymen Cooperative, Inc., a cooperative association representing dairy farmers throughout that region. Mid-Am also filed views in support of its request.

After consideration of all relevant material, including the proposal in the notice, the comments received, and other available information, it is hereby found and determined that the following provisions of the order do not tend to effectuate the declared policy of the Act:

1. For the months of September 1991 through February 1992:

In the second sentence of § 1137.7(b), the words "plant which has qualified as a" and "of March through August"; and

2. For the months of September 1991 through August 1992:

In the first sentence of § 1137.12(a)(1), the words "from whom at least three deliveries of milk are received during the month at a distributing pool plant"; and in the second sentence "30 percent in the months of March, April, May, June, July, and December, and 20 percent in other months of," and the word "distributing".

Statement of Consideration

Mid-America Dairymen, Inc. (Mid-Am), a cooperative association that supplies some of the market's fluid milk needs and handles some of the market's reserve supplies, requested a continuation of the suspension of certain provisions to prevent the uneconomical movement of milk for the sole purpose of pooling the milk of the cooperative's producers who historically have been associated with the Eastern Colorado market. For the months of September 1991 through February 1992, this action continues the removal of the limit on the period of automatic pool plant status for supply plants which met the pool shipping standards during a previous September through February shipping season. For the months of September 1991 through August 1992, the suspension continues to remove the requirement that three deliveries of a member-producer's milk be received at a pool distributing plant each month to qualify the dairy farmer's milk for diversion and the percentage limits on the aggregate amount of milk that a cooperative may divert to nonpool plants for its account. These pooling provisions have been suspended the last five years.

Statistical data for the Eastern and Western Colorado markets (which are combined to avoid revealing confidential information) illustrates that the increase in production in these markets has exceeded the increase in Class I use. For the first seven months of 1991, production increased an average of 9.1 percent, while Class I use increased only 1.2 percent over the same interval.

The available market statistics establish that there will be ample supplies of locally produced milk available to meet the fluid needs of Eastern Colorado distributing plants on a direct-ship basis, as Mid-Am states, without requiring supply plants to make qualifying shipments from September 1991 through February 1992. There is also no need to require that a member-producer's milk be received at least three times each month at a pool distributing plant or that the percentage restrictions on diversions to nonpool plants by cooperatives apply during September 1991 through August 1992.

Suspension of these performance standards will continue to give cooperatives additional flexibility in handling surplus milk and will therefore promote the orderly disposition of the milk that is not needed at Eastern Colorado distributing plants.

Interested parties were given an opportunity to comment on this proposed action. No opposing views were received.

Without this action, Mid-Am would have to ship milk from farms located in western Nebraska and western Kansas to Denver-area bottling plants in order to maintain pool status for those producers. The producers in those areas have been associated with this market for several years. In addition, the distant milk would displace locally produced milk and would result in increased shipments from the Denver area to manufacturing plants located in the western Nebraska and western Kansas areas.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area in that without extensive hauling and handling the milk of producers who have regularly supplied this market would be excluded from the marketwide pool thereby causing a disruption in the orderly marketing of milk.

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this suspension. No opposing views were received.

Therefore, good cause exists for making this order effective upon publication in the **Federal Register**.

List of Subjects in 7 CFR Part 1137

Milk.

It is therefore ordered, That the following provisions in § 1137.7(b) of the Eastern Colorado order are hereby suspended for the months of September 1991 through February 1992 and the following provisions in § 1137.12(a)(1) of the Eastern Colorado order are hereby suspended for the months of September 1991 through August 1992.

PART 1137—MILK IN THE EASTERN COLORADO MARKETING AREA

1. The authority citation for 7 CFR part 1137 continues to read as follows:

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

§ 1137.7 [Amended]

2. [Suspended in part] In the second sentence of § 1137.7(b), the words "plant which has qualified as a" and "of March through August"; and

§ 1137.12 [Amended]

3. [Suspended in part] In the first sentence of § 1137.12(a)(1), the words "from whom at least three deliveries of milk are received during the month at a distributing pool plant"; and in the second sentence the words "30 percent in the months of March, April, May, June, July, and December, and 20 percent in other months of," and the word "distributing".

Signed at Washington, DC, on: September 24, 1991.

Jo Ann R. Smith,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 91–23502 Filed 9–27–91; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 23

[Docket No. 084CE, Special Condition 23–ACE–55]

Special Conditions; Cessna Model 525 Airplane

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are being issued for the Cessna Aircraft Co. Model 525 airplanes. These airplanes will have novel and unusual design features when compared to the state of technology envisaged in the applicable airworthiness standards. These design features include engine location, performance characteristics, and protection of electronic systems from lightning and high intensity radiated electromagnetic fields, for which the applicable regulations do not contain adequate or appropriate airworthiness standards. These special conditions contain the additional airworthiness standards that the Administrator considers necessary to establish a level of safety equivalent to the airworthiness standards applicable to these airplanes.

EFFECTIVE DATE: October 30, 1991.

FOR FURTHER INFORMATION CONTACT: Norman R. Vetter, Aerospace Engineer, Standards Office (ACE–110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, room 1544, 601 East 12th Street, Federal Office Building, Kansas City, Missouri 64106; telephone (816) 426–5688.

SUPPLEMENTARY INFORMATION:

Background

On February 14, 1990, the Cessna Aircraft Co., P.O. Box 7704, Wichita, KS 67277 made application for normal category type certification of the Model 525 airplane. This airplane is a five-to-seven place, all metal, low wing, T-tail, twin turbofan engine-powered monoplane with fully enclosed retractable landing gear. The Model 525 has engines mounted aft on the fuselage and is capable of Mach .785 performance.

Type Certification Basis

Type certification basis of the Model 525 airplane is: Federal Aviation Regulations (FAR) 23, effective February 1, 1965, through amendment 23–38, effective October 26, 1989, plus amendment 23–40, effective September 10, 1990; FAR 36, effective December 1, 1969, through the amendment effective on the date of type certification; exemptions, if any; and these special conditions.

Discussion

Cessna plans to incorporate certain novel and unusual design features into the airplane for which the airworthiness regulations do not contain adequate or appropriate safety standards. These features include electronic systems, engine location, and certain performance characteristics necessary for this type of airplane that were not envisaged by the existing regulations.

Special conditions may be issued and amended, as necessary, as part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.17(a)(1) do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane. Special conditions, as appropriate, are issued in accordance with § 11.49 after public notice, as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and will become a part of the type certification basis, as provided by § 21.17(a)(2).

Cockpit Evacuation of Smoke

Small airplanes have typically been unpressurized where smoke could be evacuated by opening windows or, if pressurized, have had maximum operating altitudes such that the airplane could be readily depressurized to evacuate smoke without creating an unsafe condition. The Cessna Model 525 will not have smoke evacuation provisions because of higher differential pressures and longer times needed to depressurize and ventilate the cockpit. These special conditions require the capability to evacuate smoke from the cockpit and require the ventilation air for normal operations to be free of harmful or hazardous concentrations of gases and vapors because of the need to maintain an acceptable environment at the maximum operating altitudes of this airplane.

Protection of Electronic Flight Instrument System (EFIS) and Autopilot Flight Director From Indirect Effects of Lightning

Concern for the vulnerability of airplane electrical and electronic systems to the effects of lightning has increased substantially over the past few years. This concern is due to the use of solid-state components and digital electronics in airplane systems that are susceptible to transient effects of induced electrical current and voltage caused by either a direct lightning strike to the airplane or by the electric fields created by a nearby lightning flash. These induced transient currents and voltages can degrade electronic system performance by damaging components or upsetting system functions.

Increased dependence on electronic equipment for safe operation of an airplane makes adequate protection of that equipment a primary requirement. These special conditions will provide for the requisite protection from the indirect effects of lightning.

Protection of Systems From High Intensity Radiated Fields (HIRF)

Recent advances in technology have given rise to the application in aircraft designs of advanced electrical and electronic systems that perform functions required for continued safe flight and landing. Due to the use of sensitive solid state components in analog and digital electronics circuits, these advanced systems are readily responsive to the transient effects of induced electrical current and voltage caused by the HIRF incident on the external surface of aircraft. These induced transient currents and voltages can degrade electronic systems performance by damaging components or upsetting system functions.

Furthermore, the electromagnetic environment has undergone a transformation that was not envisioned when the current requirements were developed. Higher energy levels are radiated from transmitters that are used for radar, radio, and television. Also, the population of transmitters has increased significantly.

The combined effect of the technological advances in aircraft design and the changing environment has resulted in an increased level of vulnerability of electrical and electronic systems required for the continued safe flight and landing of the aircraft. Effective measures against the effects of exposure to HIRF must be provided by the design and installation of these systems.

The accepted maximum energy levels in which civilian airplane system installations must be capable of operating safely are based on surveys and analysis of existing radio frequency emitters. These special conditions require that the airplane be evaluated under these energy levels for the protection of the electronic system and its associated wiring harness. These external threat levels are believed to represent the worst case to which an airplane would be exposed in the operating environment.

These special conditions require qualification of systems that perform critical functions, as installed in aircraft, to the defined HIRF environment in paragraph (1) or, as an option to a fixed value using laboratory tests, in paragraph (2), as follows:

(1) The applicant may demonstrate that the operation and operational capability of the installed electrical and electronic systems that perform critical functions are not adversely affected when the aircraft is exposed to the HIRF environment, defined below:

FIELD STRENGTH VOLTS/METER

Frequency	Peak	Average
10-500 KH_z	80	80
500-2000	80	80
2-30 MH_z	200	200
30-100	33	33
100-200	33	33
200-400	150	33
400-1000	8.3K	2K
1-2 GH_z	9K	1.5K
2-4	17K	1.2K
4-6	14.5K	800
6-8	4K	666
8-12	9K	2K
12-20	4K	509
20-40	4K	1K

Or:

(2) The applicant may demonstrate by a laboratory test that the electrical and electronic systems that perform critical functions can withstand a peak electromagnetic field strength of 100 volts per meter (v/m) or the external HIRF environment, whichever is less, in a frequency range of 10KHz to 18GHz. When using a laboratory test to show compliance with the HIRF requirements, no credit is given for signal attenuation due to installation.

A preliminary hazard analysis must be performed by the applicant for approval by the FAA to identify electrical and/or electronic systems that perform critical functions. The term "critical" means those functions whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the aircraft. The systems identified by the hazard analysis that perform critical functions are candidates for the application of HIRF requirements. A system may perform both critical and non-critical functions. Primary electronic flight display systems, and their associated components, perform critical functions such as attitude, altitude, and airspeed indication. The HIRF requirements apply only to critical functions.

Compliance with HIRF requirements may be demonstrated by tests, analysis, models, similarity with existing systems, or a combination thereof. Service experience alone is not acceptable since such experience in normal flight operations may not include an exposure to the HIRF environment. Reliance on a system with similar design features for redundancy as a means of protection against the effects of external HIRF is generally insufficient since all elements of a redundant system are likely to be exposed to the fields concurrently.

EFIS

When part 23 airworthiness standards were promulgated, they did not address the electronic display systems (cathode-ray tube displays) that are presently available for installation in small airplanes. Revisions to part 23 have not included criteria needed to define a minimum level of safety for evaluation of technology used in electronic display systems that will be installed in small airplanes. These special conditions will allow electronic display units to replace mechanical or electromechanical instruments, which present part 23 standards address. The EFIS installations must meet the legibility, sensor cue, redundancy, and reliability requirements defined in these special conditions.

These special conditions require a detailed examination of each item of equipment or component of the electronic instrument system. They also require an investigation of the system installation to determine: (1) If the airplane is dependent upon its function for continued safe flight and landing; (2) if its failure will significantly reduce the IFR capability of the airplane; (3) if its failure will significantly reduce the ability of the crew to cope with these adverse operating conditions. Each component of the installation identified as being critical to the safe operation of the airplane will be required to comply with these special conditions, and, therefore, will permit the approval of more advanced systems.

These special conditions also require that essential components of the electronic display system that require electrical power be considered "essential loads" on the aircraft's power supply. The power source(s) and its distribution system must be able to supply power to the electronic display system as stated in the special conditions since the operational reliability of the electronic display system is dependent on the power source of the airplane.

Section 23.1309 has been used since amendment 23-14 as a means of evaluating systems. The "no single fault" or "fail safe" concept, along with experience based on service-proven designs and good engineering judgement, has been used to successfully evaluate most airplane systems and equipment. However, the FAA is finding it difficult to apply the "single fault" concept and to utilize the application of "good engineering judgement" as a means of determining the likelihood or effects of certain failures to complex systems like those in the Cessna Model 525. Therefore, there is a need to include the additional reliability requirements in the certification basis.

These special conditions provide reliability requirements that are based on the criticalness of the system's function. They will provide the standards needed for the certification of complex safety-critical electronic display systems being proposed for the Model 525 airplane.

It has been determined that some electronic display systems perform critical functions. Therefore, it will be necessary to show that the systems meet more stringent requirements. Systems that perform a function that is needed for continued safe flight and landing of the airplane must meet the requirement that there will be no failure of that system.

These special conditions also require that system failures that would reduce the airplane's capability, or the ability of the crew to cope with adverse operating conditions, are not likely to occur. It is recognized that any electronic display system or other system failure will reduce the airplane's or crew's capability by some degree, but that reduction may not be serious enough to make the operation of the airplane potentially catastrophic.

Thrust Attenuation

The Model 525 design includes a system that permits the attenuating of engine thrust. Attenuation is accomplished by movable panels, mounted on the engine pylons downstream of the exhaust cones, that can be deployed into the exhaust streams. The thrust attenuators are designed to be used in both ground and flight operations and differ from thrust reversers in that attenuators do not provide for either zero or reverse thrust levels. These special conditions provide requisite standards for thrust attenuating systems.

Engine Fire Extinguishing System

The Model 525 design includes engines mounted aft on the fuselage. The applicable existing regulations do not require fire extinguishing systems for engines. Aft mounted engine installations, along with the need to protect such installed engines from fires, were not envisaged in the development of part 23; therefore, a special condition for a fire extinguishing system for the engines of the Model 525 is issued.

Performance

Previous certification and operational experience with jet powered airplanes of similar design in the normal category reveal certain unusual characteristics compared to other airplanes certificated in the normal category. The average pilot, expected to be the operator of this class of airplane, is not likely to be familiar with the characteristics applicable to jet powered airplanes. These characteristics have caused significant safety problems when pilots attempted takeoffs and landings using procedures and instincts developed with conventional part 23 airplanes, particularly with a large variation in temperature and altitude. In recognition of these characteristics, Special Civil Air Regulation No. SR–422, and follow-on regulations, established weight-altitude-temperature limitations and procedures for scheduling takeoff and landing for turbine engine-powered transport category airplanes, so the pilot could achieve reliable and repeatable results under all expected conditions of operation. Similar requirements have been applied to airplanes certified in the commuter category of part 23. This entails specific takeoff and landing performance tests. In conjunction with the development of takeoff and landing procedures, it was also necessary to establish required climb gradients and data for flight path determination under all approved weights, altitudes, and temperatures. This enables the pilot to determine, before takeoff, that a safe takeoff, departure, and landing at the destination can be achieved.

Current standards in part 23 did not envisage this type of airplane and the associated performance. Based upon the knowledge and experience gained during certification and operation of previous similar part 23 jet airplanes, special conditions are issued for the performance requirements of takeoff, takeoff speeds, accelerate-stop distance, takeoff path, takeoff distance, takeoff run, and takeoff flight path.

General performance special conditions are issued to require that procedures for takeoff, accelerate-stop, and landing be those established for operation in service, be executable by pilots of average skill, and include reasonably expected time delays.

Climb

To maintain a level of safety that is consistent with the requirements of the special conditions for takeoff, takeoff speeds, takeoff path, takeoff distance, and takeoff run, it is appropriate to issue associated requirements that specify climb gradients, airplane configurations, and consideration of atmospheric conditions that will be encountered. Current standards in part 23 did not envisage this type of airplane and the associated climb considerations. Special conditions are issued for climb with one engine inoperative, landing climb, and general climb conditions.

Landing

Landing distance determined for the same parameters, plus the effect of wind, is consistent with takeoff information for the range of weights, altitudes, and temperatures approved for operation. Further, it is necessary to consider time delays to provide for inservice variation in the activation of deceleration devices, such as spoilers and brakes. Current standards in part 23 did not envisage this type of airplane and the associated landing performance considerations. Special conditions are issued to address these items.

Minimum Control Speed

The Cessna Model 525 will be operated in an environment and in a manner requiring defined minimum control speeds, both in the air and on takeoff, to ensure safe operations. A requisite to sequentially establishing proper controllability from the start of takeoff until reaching the decision speed (V_1) in the takeoff performance special conditions is identification of V_{MCG}, the minimum control speed on the ground. In the past, a requirement to define V_{MCG} has not been necessary for part 23 airplanes. However, the existence of V_{MCG} has been considered in determining V_1 decision speed and has been administered by established policy in Advisory Circular AC 23–8A.

Trim

Special conditions are issued to maintain a level of safety that is consistent with the use of V_{MO}/M_{MO} and the requirements established for previous part 23 jet airplanes. Current standards in part 23 did not envisage this type of airplane and the associated trim considerations.

Static Longitudinal Stability

To maintain a level of safety consistent with that applied to previous part 23 jet airplanes, it is appropriate to define applicable requirements for static longitudinal stability. Current standards in part 23 did not envisage this type of airplane and the associated stability considerations. Special conditions are issued to establish static longitudinal stability requirements that include a stick force versus speed specification and stability requirements applicable to high speed jet airplanes.

Demonstration of Static Longitudinal Stability

To maintain a level of safety consistent with the proposed static longitudinal stability requirements, it is necessary to establish corresponding requirements for the demonstration of

static longitudinal stability. Current standards in part 23 did not envisage this type of airplane and the associated stability considerations. Special conditions are issued to do so.

Static Directional and Lateral Stability

In keeping with the concept of V_{MO}/M_{MO} being a maximum operational speed limit, rather than a limiting speed for the demonstration of satisfactory flight characteristics, it is appropriate to extend the speed for demonstration of lateral/directional stability characteristics from the V_{MO}/M_{MO} of part 23 to the maximum speed for stability characteristics, V_{FC}/M_{FC}, for this airplane. Current standards in part 23 did not envisage this type of airplane and the associated stability considerations. Special conditions to do this are issued.

Stall Characteristics

In order to maintain consistency with the stall warning requirements and the level of safety previously applied to other jet powered small airplanes, it is appropriate to specify the conditions under which level flight, turning flight, and accelerated entry stall characteristics should be demonstrated. Current standards in part 23 did not envisage this type of airplane, the associated high thrust-to-weight ratio, and laminar flow airfoil characteristics. Special conditions are issued to define stall characteristics demonstrations.

Stall Warning

Advisory Circular AC 23–8A provides guidelines for the application of the stall warning requirements currently specified in § 23.207(c). The FAA has recognized the problems associated with showing literal compliance with § 23.207(c) when airplanes with high power-to-weight ratios are being evaluated. Current standards in part 23 did not envisage this type of airplane and the associated stall warning considerations. This issue was discussed during the Small Airplane Airworthiness Review Conference held in St. Louis, Missouri, during the week of October 22–26, 1984, at which it was concluded that § 23.207(c) required revision to properly address this condition. Previous guidance relating to this matter was provided in FAA Order 8110.7 and AC 23–8. The service history of numerous airplanes that were certified using this earlier guidance, which is similar to that included in this special condition, has been satisfactory. Special conditions are issued to specify appropriate requirements for stall warning for the Model 525.

Vibration and Buffeting

The Model 525 will be operated at high altitudes where stall-Mach buffet encounters (small speed margin between stall and transonic flow buffet) are likely to occur. This is not presently addressed in part 23. Information that will enable the flight crew to plan flight operations that will maximize maneuvering capability during high altitude cruise flight and preclude intentional operations exceeding the boundary of perceptible buffet is necessary. Buffeting is considered to be a warning to the pilot that the airplane is approaching an undesirable and eventually dangerous flight regime, i.e., stall buffeting, high speed buffeting or maneuvering (load factor) buffeting. In straight flight, therefore, such buffet should not occur at any normal operating speed up to the maximum operating limit speed, V_{MO}/M_{MO}. Sufficient information must be provided to the crew so that buffet encounters during normal flight operations can be avoided. Special conditions are issued to require buffet onset tests and the inclusion of this information in the Airplane Flight Manual (AFM) to provide guidance to the crew.

High Speed Characteristics and Maximum Operating Limit Speed

The Cessna Model 525 will be operated at high altitudes and high speeds. The operating envelope includes areas in which Mach effects, which have not been considered in part 23, may be significant. These conditions may degrade the ability of the flight crew to promptly recover from inadvertent excursions beyond maximum operating speeds. The ability to pull a positive load factor is needed to assure, during recovery from upset, that the airplane speed does not continue to increase to a value where recovery may not be achievable by the average pilot or flight crew.

Additionally, to allow the aircraft designer to conservatively design to higher speeds than may be operationally required for the airplane, the concept of V_{DF}/M_{DF}, the highest demonstrated flight speed for the type design is appropriate for this airplane. This permits V_D/M_D, the design dive speed, to be higher than the speed actually required to be demonstrated in flight. Current standards in part 23 did not envisage this type of airplane and the associated high speed considerations. Accordingly, special conditions are issued to allow determination of a maximum demonstrated flight speed and to relate the determination of V_{MO}/M_{MO} to this speed, V_{DF}/M_{DF}.

Airspeed Indicating System

To maintain a level of safety consistent with that applied to previous part 23 jet airplanes and to be consistent with the establishment of scheduled performance requirements, it is appropriate to establish applicable requirements for determining and providing airspeed indicating system calibration information. Additionally, it is appropriate to establish special conditions requiring protection of the pitot tube from malfunctions associated with icing conditions. Current standards in part 23 did not envisage this type of airplane and the associated airspeed indicating system requirements. Special conditions are issued to establish airspeed indicating system calibration and pitot tube ice protection requirements applicable to normal category jet airplanes.

Static Pressure System

To maintain a level of safety consistent with that applied to previous part 23 jet airplanes and to be consistent with the establishment of scheduled performance requirements, it is appropriate to establish applicable requirements for providing static pressure system calibration information in the AFM. Since aircraft of this type are frequently equipped with devices to correct the altimeter indication, it is also appropriate to establish requirements to ensure the continued availability of altitude information when such a device malfunctions. Current standards in part 23 did not envisage this type of airplane and the associated static pressure system considerations. Special conditions to do this are issued.

Minimum Crew

The Cessna Model 525 will operate at high altitudes and speeds and must be flown to a precise speed schedule to achieve required takeoff and landing distances. It employs operating considerations not envisaged in part 23 airworthiness standards. Therefore, it is appropriate to specify workload considerations. Special conditions are issued to specify the items to be considered in workload determination evaluations used to determine the minimum required flight crew.

Operating Limitations and Operating Procedures

Previous certification and operational experience with jet powered airplanes of similar design in the normal category have shown that operating limitations appropriate to this type of airplane were not envisaged in part 23. Special conditions applicable to the

establishment of operating procedures appropriate to this airplane are issued.

To maintain a level of safety that is consistent with the requirements of the special conditions for takeoff, takeoff speeds, takeoff path, takeoff distance, takeoff run, accelerate-stop distance, landing distance, and climb performance over the range of weights, altitudes, and temperatures approved for operation, it is appropriate to adopt associated requirements that specify certain conditions that must be used in establishing operating limitations. Additionally, appropriate special conditions that implement these performance requirements are issued.

Performance Information

Current standards in part 23 did not envisage this type of airplane and the associated performance considerations. To maintain a level of safety that is consistent with the special conditions, it is appropriate to issue associated requirements that specify the information that must be included in the AFM.

Airplane Flight Manual

To maintain a level of safety that is consistent with the special conditions for operating procedures and performance information, it is appropriate to delete the option in the AFM requirements that allow operating procedures, performance information and loading information to be unapproved. A special condition is issued to delete that option.

Airspeed Indicator

Current standards in part 23 did not envisage this type of airplane and the associated speed scheduling considerations. To maintain a level of safety that is consistent with the special conditions for performance, including scheduled takeoff and landing procedures, speeds, etc., it is appropriate to eliminate the airspeed indicator markings required by part 23 and to replace these markings with airspeed indicator markings consistent with the more complex performance requirements applicable to this airplane. Special conditions are issued that specify the airspeed indicator markings applicable to these procedures.

Effects of Contamination on Natural Laminar Flow Airfoils

Airfoil configurations similar to the Cessna Model 525 have been found to have measurable degradations of handling qualities and performance when laminar flow was lost due to airfoil contamination. Tripping of the boundary layer could be caused from flight in precipitation conditions or by the presence of contaminations such as insects. If measurable effects are detected, it should be determined that the minimum flight characteristics standards continue to be met, and that any degradations to performance information are identified. This may be accomplished by a combination of analysis and testing. Current standards in part 23 did not envisage this type of airplane and the associated airfoil contamination considerations. Special conditions are issued since existing regulations do not require these adverse effects to be evaluated.

Discussion of Comments

Notice of Proposed Special Conditions, Docket No. 084CE, Notice No. 23–ACE–55 (55 FR 50839, December 11, 1990) proposed special conditions for the Cessna Model 525 airplane. The comment period for the notice closed January 10, 1991. On February 5, 1991, (56 FR 4581) the comment period was reopened through March 1, 1991. Comments were received from a total of three commenters.

Regarding proposed special condition 3, one commenter believes it unnecessary to conduct a laboratory test at a field strength level higher than the defined external threat level. He suggests the preamble text be revised to read "field strength of 100 volts per meter (v/m) or the external threat level, whichever is less, in a frequency range of 10KHz to 18GHz." The FAA agrees and has reworded the special condition accordingly. The same commenter believes it unreasonable to subject to post-certification reassessment an applicant opting for the fixed value laboratory test. The FAA agrees and has deleted the post-certification reassessment. Should service difficulties arise, they will be dealt with by the Airworthiness Directive process.

Regarding proposed special condition 4, one commenter asked whether reliability/probability terms are to be viewed as qualitative or quantitative. The FAA is currently revising AC 23.1309 to provide quantitative definitions.

One commenter perceives a conflict between proposed special condition 15 that he says "requires temperature to be taken into account as a variable in scheduling landing performance" and §§ 25.125 and 23.75 "which allow standard temperature to be assumed." Section 23.1583(c)(4) requires temperature accountability for landing for commuter category airplanes. Special condition 15 merely incorporates temperature accountability into the determination phrase; thus, the special condition will be adopted as proposed.

Regarding proposed special condition 36, one commenter made extensive comments on what flight conditions should be tested for laminar flow and non-laminar flow. The commenter references data in NASA Contractor Report 181967, "Flight Test Investigation of Certification Issues Pertaining to General-Aviation-Type Aircraft with Natural Laminar Flow". The commenter states that results of the flight testing show that the aircraft with or without laminar flow will have the same flight characteristics except for those conditions where aircraft drag is significant (i.e., aircraft speed, rate of climb, and takeoff distance) and that stall characteristics, stall speeds, and stability levels are not expected to be influenced by natural laminar flow (NLF).

The FAA does not have any experience in extending the conclusions in the referenced report to another airfoil (although similar) and to other airplanes. Therefore, the FAA must take the conservative approach and investigate the flight conditions required by the special conditions. Further, the FAA does not agree that the referenced report shows that stall characteristics are unaffected by tripped NLF.

The commenter points out that the proposed special condition includes some sections that are inappropriate for the Cessna 525, such as acrobatic maneuvers, spinning, ground handling, etc. The FAA agrees and the special condition is revised to delete the reference to inappropriate flight conditions.

Regarding proposed special condition 38, one commenter believes that the AFM discussion in the notice of proposed special conditions makes it appear that the FAA seeks to prohibit providing, within the AFM cover, segregated guidance information that is often provided to aid flight crews in situations not provided for in the regulations. As an example, the commenter cites the performance decrements that should be taken into account on wet or icy runways. Also, the commenter believes that wording of the proposed special condition should make it clear that unapproved data may be presented in the AFM when the segregation provisions of § 23.1581(b)(1) are utilized, notwithstanding the preamble intent statements.

The FAA agrees that the discussion in the notice of proposed special conditions should have expressed what is required for a satisfactory AFM rather than discussing deletion of an option.

However, the proposed special condition is clear and uses the same language concerning segregation of approved and unapproved material that is used in the existing part 23 and that has been used for several years. Therefore, the special condition will be adopted as proposed.

The French Direction Generale De L'Aviation Civile (DGAC) submitted a draft certification basis that they would consider to be applicable to the Cessna 525 if it were to be certified in Europe. Since no specific changes were suggested, no changes are being made to the proposed special conditions as a result of the DGAC comments.

In the absence of other comments, and except for minor editorial corrections, the remaining special conditions will be adopted as proposed.

Conclusion

In view of the design features discussed for the Model 525 airplane, the following special conditions are issued. This action is not a rule of general applicability and affects only the model of airplane identified in these special conditions.

List of Subjects in 14 CFR Parts 21 and 23

Aircraft, Air transportation, Aviation safety, and Safety.

The authority citation for these special conditions is as follows:

Authority: Secs. 313(a), 601, and 603 of the Federal Aviation Act of 1958; as amended [49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g); 14 CFR 21.16 and 21.17; and 14 CFR 11.28 and 11.29(b).

Adoption of Special Condition

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration issues the following special conditions as part of the type certification basis for the Cessna Model 525 airplane:

1. Cockpit Evacuation of Smoke

In the absence of specific requirements for evacuating smoke from the cockpit, the following applies: The ventilating air in the flight crew and passenger compartments must be free of harmful or hazardous concentrations of gases and vapors in normal operations and in the event of a reasonably probable failure or malfunctioning of the ventilation heating, pressurization or other system and equipment. If the accumulation of hazardous quantities of smoke in the cockpit area is reasonably probable, the evacuation of such smoke must be readily accomplished starting with full cockpit pressurization and without depressurizing beyond safe limits.

2. Protection of Electrical and Electronic Systems From Indirect Effects of Lightning

(a) Each system that performs critical functions must be designed and installed to ensure that the operation and operational capabilities of these systems to perform critical functions are not adversely affected when the airplane is exposed to lightning.

(b) Each essential function of the system must be protected to ensure that the essential function can be recovered after the airplane has been exposed to lightning.

3. Protection of Electrical and Electronic Systems From High Intensity Radiated Fields

Each system that performs critical functions must be designed and installed to ensure that the operation and operational capabilities of these systems to perform critical functions are not adversely affected when the airplane is exposed to high intensity radiated electromagnetic fields external to the airplane.

4. Electronic Flight Instrument Displays

In addition to, and instead of, the applicable airworthiness standards of part 23 and requirements to the contrary, for instruments, systems, and installations whose design incorporates electronic displays that feature design characteristics where a single malfunction or failure could affect more than one primary instrument display or system, and/or system design functions that are determined to be required for continued safe flight and landing of the airplane, the following special conditions apply:

(a) Systems and associated components must be examined separately and in relation to other airplane systems to determine whether the airplane is dependent upon its function for continued safe flight and landing and whether its failure would significantly reduce the capability of the airplane or the ability of the crew to cope with adverse operating conditions. Each system and each component identified by this examination upon which the airplane is dependent for proper functioning to ensure continued safe flight and landing, or whose failure would significantly reduce the capability of the airplane or the ability of the crew to cope with adverse operating conditions, must be designed and examined to comply with the following requirements:

(1) It must be shown that there will be no single failure or probable combination of failures, under any foreseeable operating condition, that would prevent the continued safe flight and landing of the airplane, or it must be shown that such failures are extremely improbable.

(2) It must be shown that there will be no single failure or probable combination of failures, under any foreseeable operating condition, that would significantly reduce the capability of the airplane or the ability of the crew to cope with adverse operating conditions, or it must be shown that such failures are improbable.

(3) Warning information must be provided to alert the crew to unsafe system operating conditions and to enable them to take appropriate corrective action. Systems, controls, and associated monitoring and warning means must be designed to minimize initiation of crew action that would create additional hazards.

(4) Compliance with the requirements of these special conditions may be shown by analysis and, where necessary, by appropriate ground, flight, or simulator tests. The analysis must consider:

(i) Modes of failure, including malfunction and damage from foreseeable sources;

(ii) The probability of multiple failures, and undetected faults;

(iii) The resulting effects on the airplane and occupants, considering the state of flight and operating conditions; and

(iv) The crew warning cues, corrective action required, and the capability of detecting faults.

(5) Numerical analysis may be used to support the engineering examination.

(b) Electronic display indicators, including those incorporating more than one function, may be installed instead of mechanical or electromechanical instruments if, during normal modes of operation:

(1) The electronic display indicators:

(i) Are easily legible under all lighting conditions encountered in the cockpit, including direct sunlight;

(ii) Do not inhibit the primary display of attitude, altitude, or airspeed; and

(iii) Incorporate sensory cues for the pilot that are equivalent to those in the instrument being replaced by the electronic display units.

(2) The electronic display indicators, including their systems and installations, are designed so that one display of information essential to safety and successful completion of the flight remains available to the pilot,

without need for immediate action by any crewmember for continued safe operation, after any single failure or probable combination of failures that is not shown to comply with paragraph (a)(1) of this special condition.

5. Thrust Attenuating Systems

Thrust attenuating systems must be designed and installed so that no unsafe condition will result during normal operation of the systems, or from any failure (or reasonably likely combination of failures) of the thrust attenuation systems under any anticipated condition of operation of the airplane, including ground operation. Failure of structural elements need not be considered if the probability of this kind of failure is extremely remote.

6. Engine Fire Extinguishing System

(a) Fire extinguishing systems must be installed and compliance must be shown with the following:

(1) Except for combustor, turbine, and tailpipe sections of turbine-engine installations that contain lines or components carrying flammable fluids for which a fire originating in these sections can be controllable, a fire extinguisher system must serve each engine compartment.

(2) The fire extinguishing system, the quantity of the extinguishing agent, the rate of discharge, and the discharge distribution must be adequate to extinguish fires.

(3) The fire extinguishing system for a nacelle must be able to simultaneously protect each compartment of the nacelle for which protection is provided.

(b) Fire extinguishing agents must meet the following requirements:

(1) Be capable of extinguishing flames emanating from any burning of fluids or other combustible materials in the area protected by the fire extinguishing system.

(2) Have thermal stability over the temperature range likely to be experienced in the compartment in which they are stored; and

(3) If any toxic extinguishing agent is used, provisions must be made to prevent harmful concentrations of fluid from entering any personnel compartment even though a defect may exist in the extinguishing system.

(c) Fire extinguishing agent containers must meet the following requirements:

(1) Have a pressure relief to prevent bursting of the container by excessive internal pressures.

(2) The discharge end of each discharge line from a pressure relief connection must be located so the discharge of the fire extinguishing agent would not damage the airplane. The line must also be located or protected to prevent clogging caused by ice or other foreign matter.

(3) A means must be provided for each fire extinguishing agent container to indicate that the container has discharged or that the charging pressure is below the established minimum necessary for proper functioning.

(4) The temperature of each container must be maintained, under intended operating conditions, to prevent the pressure in the container from falling below that necessary to provide an adequate rate of discharge, or rising high enough to cause premature discharge; and

(5) If a pyrotechnic capsule is used to discharge the fire extinguishing agent, each container must be installed so that temperature conditions will not cause hazardous deterioration of the pyrotechnic capsule.

(d) Fire extinguisher system materials must meet the following requirements:

(1) No material in any fire extinguishing system may react chemically with any extinguishing agent so as to create a hazard; and

(2) Each system component in an engine compartment must be fireproof.

7. Performance: General

In addition to the requirements of § 23.45, the following apply:

(a) Unless otherwise prescribed, the applicant must select the takeoff, en route, approach, and landing configurations for the airplane.

(b) The airplane configurations may vary with weight, altitude, and temperature, to the extent they are compatible with the operating procedures required by paragraph (c) of this special condition.

(c) Unless otherwise prescribed, in determining the accelerate-stop distances, takeoff flight paths, takeoff distances, and landing distances, changes in the airplane's configuration, speed, power, and thrust, must be made in accordance with procedures established by the applicant for operation in service.

(d) Procedures for the execution of balked landings and missed approaches associated with the conditions prescribed in special conditions 14 and 16 must be established.

(e) The procedures established under paragraphs (c) and (d) of this special condition must:

(1) Be able to be consistently executed in service by crews of average skill;

(2) Use methods or devices that are safe and reliable; and

(3) Include allowance for any time delays, in the execution of the procedures, that may reasonably be expected in service.

8. Takeoff

Instead of complying with § 23.51, the following apply:

(a) The takeoff speeds described in special condition 9, the accelerate-stop distance described in special condition 10, the takeoff path described in special condition 11, and the takeoff distance and takeoff run described in special condition 12 must be determined:

(1) At each weight, altitude, and ambient temperature within the operational limits selected by the applicant; and

(2) In the selected configuration for takeoff.

(b) No takeoff made to determine the data required by this special condition may require exceptional piloting skill or alertness.

(c) The takeoff data must be based on a smooth, dry, hard-surfaced runway.

(d) The takeoff data must include, within the established operational limits of the airplane, the following operational correction factors:

(1) Not more than 50 percent of nominal wind components along the takeoff path opposite to the direction of takeoff, and not less than 150 percent of nominal wind components along the takeoff path in the direction of takeoff.

(2) Effective runway gradients.

9. Takeoff Speeds

Instead of compliance with § 23.53, the following apply:

(a) V_1 must be established in relation to V_{EF} as follows:

(1) V_{EF} is the airspeed at which the critical engine is assumed to fail. V_{EF} must be selected by the applicant, but may not be less than V_{MCG} determined under special condition 18.

(2) V_1, in terms of airspeed, is the takeoff decision speed selected by the applicant; however, V_1 may not be less than V_{EF} plus the speed gained with the critical engine inoperative during the time interval between the instant at which the critical engine fails and the instant at which the pilot recognizes and reacts to the engine failure, as indicated by the pilot's application of the first retarding means during the accelerate-stop test.

(b) V_2 min, in terms of airspeed, may not be less than:

(1) 1.2 V_{S1}.

(2) 1.10 time V_{MC} established under § 23.149.

(c) V_2, in terms of airspeed, must be selected by the applicant to provide at least the gradient of climb required by

special condition 14(b) but may not be less than:

(1) V_2 min; and

(2) V_R plus the speed increment attained (in accordance with special condition 11) before reaching a height of 35 feet above the takeoff surface.

(d) V_{MU} is the airspeed at, and above, which the airplane can safely lift off the ground and continue the takeoff. V_{MU} speeds must be selected by the applicant throughout the range of thrust-to-weight ratios to be certified. These speeds may be established from free-air data if these data are verified by ground takeoff tests.

(e) V_R, in terms of airspeed, must be selected in accordance with the conditions of subparagraphs (1) through (4) of this section:

(1) V_R may not be less than:

(i) V_1;

(ii) 105 percent of V_{MC};

(iii) The speed [determined in accordance with special condition 11(c)(2)] that allows reaching V_2 before reaching a height of 35 feet above the takeoff surface; or

(iv) A speed that, if the airplane is rotated at its maximum practicable rate, will result in a V_{LOF} of not less than 110 percent of V_{MU} in the all-engines-operating condition and not less than 105 percent of V_{MU} determined at the thrust-to-weight ratio corresponding to the one-engine-inoperative condition.

(2) For any given set of conditions (such as weight, configuration, and temperature), a single value of V_R, obtained in accordance with this section, must be used to show compliance with both the one-engine-inoperative and the all-engines-operating takeoff provisions.

(3) It must be shown that the one-engine-inoperative takeoff distance, using a rotation speed of 5 knots less than V_R, established in accordance with subparagraphs (1) and (2) of this section, does not exceed the corresponding one-engine-inoperative takeoff distance using the established V_R. The takeoff distances must be determined in accordance with special condition 12(a)(1).

(4) Reasonably expected variations in service from the established takeoff procedures for the operation of the airplane (such as over-rotation of the airplane and out-of-trim conditions) may not result in unsafe flight characteristics or in marked increases in the scheduled takeoff distances established in accordance with special condition 12.

(f) V_{LOF} is the airspeed at which the airplane first becomes airborne.

10. Accelerate-Stop Distance

In the absence of specific accelerate-stop distance requirements, the following apply:

(a) The accelerate-stop distance is the sum of the distances necessary to:

(1) Accelerate the airplane from a standing start to V_{EF} with all engines operating;

(2) Accelerate the airplane from V_{EF} to V_1, assuming that the critical engine fails at V_{EF}; and

(3) Come to a full stop from the point at which V_1 is reached assuming that, in the case of engine failure, the pilot has decided to stop as indicated by application of the first retarding means at the speed V_1.

(b) Means other than wheel brakes may be used to determine the accelerate-stop distance if that means:

(1) Is safe and reliable;

(2) Is used so that consistent results can be expected under normal operating conditions; and

(3) Is such that exceptional skill is not required to control the airplane.

(c) The landing gear must remain extended throughout the accelerate-stop distance.

11. Takeoff Path

In the absence of specific takeoff path requirements, the following apply:

(a) The takeoff path extends from a standing start to a point in the takeoff at which the airplane is 1,500 feet above the takeoff surface, or at which the transition from the takeoff to the en route configuration is completed and a speed is reached at which compliance with special condition 14(c) is shown, whichever point is higher. In addition:

(1) The takeoff path must be based on procedures prescribed in special condition 7.

(2) The airplane must be accelerated on the ground to V_{EF}, at which point the critical engine must be made inoperative and remain inoperative for the rest of the takeoff; and

(3) After reaching V_{EF}, the airplane must be accelerated to V_2.

(b) During the acceleration to speed V_2, the nose gear may be raised off the ground at a speed not less than V_R. However, landing gear retraction may not be begun until the airplane is airborne.

(c) During the takeoff path determination, in accordance with paragraphs (a) and (b) of this section:

(1) The slope of the airborne part of the takeoff path must be positive at each point;

(2) The airplane must reach V_2 before it is 35 feet above the takeoff surface and must continue at a speed as close as practical to, but not less than, V_2 until it is 400 feet above the takeoff surface;

(3) At each point along the takeoff path, starting at the point at which the airplane reaches 400 feet above the takeoff surface, the available gradient of climb may not be less than 1.2 percent;

(4) Except for gear retraction, the airplane configuration may not be changed, and no change in power or thrust that requires action by the pilot may be made, until the airplane is 400 feet above the takeoff surface.

(d) The takeoff path must be determined by a continuous demonstrated takeoff or by synthesis from segments. If the takeoff path is determined by the segmental method:

(1) The segments must be clearly defined and must be related to the distinct changes in the configuration, speed, and power or thrust;

(2) The weight of the airplane, the configuration, and the power or thrust must be constant throughout each segment and must correspond to the most critical condition prevailing in the segment;

(3) The flight path must be based on the airplane's performance without ground effect; and

(4) The takeoff path data must be checked by continuous demonstrated takeoffs, up to the point at which the airplane is out of ground effect and its speed is stabilized, to ensure that the path is conservative relative to the continuous path. The airplane is considered to be out of the ground effect when it reaches a height equal to its wing span.

12. Takeoff Distance and Takeoff Run

In the absence of specific takeoff distance and takeoff run requirements, the following apply:

(a) Takeoff distance is the greater of:

(1) The horizontal distance along the takeoff path from the start of the takeoff to the point at which the airplane is 35 feet above the takeoff surface, determined under special condition 11; or

(2) 115 percent of the horizontal distance along the takeoff path, with all engines operating, from the start of the takeoff to the point at which the airplane is 35 feet above the takeoff surface, as determined by a procedure consistent with special condition 11.

(b) If the takeoff distance includes a clear way, the takeoff run is the greater of:

(1) The horizontal distance along the takeoff path from the start of the takeoff to a point equidistant between the point at which V_{LOF} is reached and the point at which the airplane is 35 feet above

the takeoff surface, as determined under special condition 11.

(2) 115 percent of the horizontal distance along the takeoff path, with all engines operating, from the start of the takeoff to a point equidistant between the point at which V_{LOF} is reached and the point at which the airplane is 35 feet above the takeoff surface, as determined by a procedure consistent with special condition 11.

13. Takeoff Flight Path

In the absence of specific takeoff flight path requirements, the following apply:

(a) The takeoff flight path begins 35 feet above the takeoff surface at the end of the takeoff distance determined in accordance with special condition 12.

(b) The net takeoff flight path data must be determined so that they represent the actual takeoff flight paths (determined in accordance with special condition 11 and with paragraph (a) of this special condition) reduced at each point by a gradient of climb equal to 0.8 percent.

(c) The prescribed reduction in climb gradient may be applied as an equivalent reduction in acceleration along that part of the takeoff flight path at which the airplane is accelerated in level flight.

14. Climb: One Engine Inoperative

Instead of compliance with § 23.67, the following apply:

(a) Takeoff; landing gear extended. In the critical takeoff configuration existing along the flight path (between the points at which the airplane reaches V_{LOF} and at which the landing gear is fully retracted) and in the configuration used in special condition 11 without ground effect, unless there is a more critical power operating condition existing later along the flight path before the point at which the landing gear is fully retracted, steady gradient of climb must be positive at V_{LOF}, and with:

(1) The critical engine inoperative and the remaining engine at the power or thrust available when retraction of the landing gear is begun in accordance with special condition 11; and

(2) The weight equal to the weight existing when retraction of the landing gear is begun, determined under special condition 11.

(b) Takeoff; landing gear retracted. In the takeoff configuration existing at the point of the flight path at which the landing gear is fully retracted and in the configuration used in special condition 11 without ground effect, the steady gradient of climb may not be less than 2.4 percent at V_2, and with:

(1) The critical engine inoperative, the remaining engine at the takeoff power or thrust available at the time the landing gear is fully retracted, determined under special condition 11 unless there is a more critical power operating condition existing later along the flight path but before the point where the airplane reaches a height of 400 feet above the takeoff surface; and

(2) The weight equal to the weight existing when the airplane's landing gear is fully retracted, determined under special condition 11.

(c) Final takeoff. In the en route configuration at the end of the takeoff path, determined in accordance with special condition 11 the steady gradient of climb may not be less than 1.2 percent at not less than 1.25 V_S, and with:

(1) The critical engine inoperative and the remaining engine at the available maximum continuous power or thrust; and

(2) The weight equal to the weight existing at the end of the takeoff path, determined under special condition 11.

(d) Approach. In the approach configuration corresponding to the normal all-engines-operating procedure in which V_S for this configuration does not exceed 110 percent of the V_S for the related landing configuration, the steady gradient of climb may not be less than 2.1 percent with:

(1) The critical engine inoperative, and the remaining engine at the available takeoff power or thrust;

(2) The maximum landing weight; and

(3) The climb speed established in connection with normal landing procedures, but not exceeding 1.5 V_S.

15. Landing

Instead of compliance with § 23.75, the following apply:

(a) The horizontal distance necessary to land and to come to a complete stop from a point 50 feet above the landing surface must be determined (for each weight, altitude, temperature and wind within the operational limits established by the applicant for the airplane), as follows:

(1) The airplane must be in the landing configuration.

(2) A steady approach at a gradient of descent not greater than 5.2 percent (3 degrees), with an airspeed of not less than 1.3 V_S, must be maintained down to the 50-foot height.

(3) Changes in configuration, power or thrust, and speed, must be made in accordance with the established procedures for service operation.

(4) The landing must be made without excessive vertical acceleration, tendency to bounce, nose over, ground loop or porpoise.

(5) The landings may not require exceptional piloting skill or alertness.

(6) It must be shown that a safe transition to the balked landing conditions of special condition 16 can be made from the conditions that exist at the 50-foot height.

(b) The landing distance must be determined on a level, smooth, dry, hard-surfaced runway. In addition:

(1) The pressures on the wheel braking systems may not exceed those specified by the brake manufacturer;

(2) The brakes may not be used so as to cause excessive wear of brakes or tires; and

(3) Means other than wheel brakes may be used if that means:

(i) Is safe and reliable;

(ii) Is used so that consistent results can be expected in service; and

(iii) Is such that exceptional skill is not required to control the airplane.

(c) The landing distance data must include correction factors for not more than 50 percent of the nominal wind components along the landing path opposite to the direction of landing and not less than 150 percent of the nominal wind components along the landing path in the direction of landing.

(d) If any device is used that depends on the operation of any engine, and if the landing distance would be noticeably increased when a landing is made with that engine inoperative, the landing distance must be determined with that engine inoperative unless the use of compensating means will result in a landing distance not more than that with each engine operating.

16. Balked Landing

Instead of compliance with § 23.77, the following apply: In the landing configuration, the steady gradient of climb may not be less than 3.2 percent, with:

(a) The engines at the power or thrust that is available eight seconds after initiation of movement of the power or thrust controls from the minimum flight idle to the takeoff position; and

(b) A climb speed of not more than 1.3 V_{S1}.

17. Climb: General

In the absence of specific general climb requirements, the following applies:

Compliance with the requirements of special conditions 14 and 16 must be shown at each weight, altitude, and ambient temperature within the operational limits established for the airplane and with the most unfavorable center of gravity for each configuration.

18. Minimum Control Speed

In addition to the requirements of § 23.149, the following apply:

(a) In establishing the minimum control speed required by this special condition, the method used to simulate critical engine failure must represent the most critical mode of powerplant failure with respect to controllability expected in service.

(b) V_{MCG}, the minimum control speed on the ground, is the calibrated airspeed during the takeoff run (when the critical engine is suddenly made inoperative) at which it is possible to recover control of the airplane with the use of primary aerodynamic controls alone (without the use of nose-wheel steering) to enable the takeoff to be safely continued using normal piloting skill and rudder control forces not exceeding 150 pounds. In the determination of V_{MCG}, assuming that the path of the airplane accelerating with all engines operating is along the center line of the runway, the airplane's path from the point at which the critical engine is made inoperative to the point at which recovery to a direction parallel to the center line is completed may not deviate more than 30 feet laterally from the center line at any point. V_{MCG} must be established with:

(1) The airplane in each takeoff configuration or, at the option of the applicant, in the most critical takeoff configuration;

(2) Maximum available takeoff power or thrust on the operating engine;

(3) The most unfavorable center of gravity;

(4) The airplane trimmed for takeoff (all engines operating); and

(5) The most unfavorable weight in the range of takeoff weights.

19. Trim

Instead of compliance with § 23.161, the following apply:

(a) General. Each airplane must meet the trim requirements of this special condition after being trimmed, and without further pressure upon, or movement of, the primary controls or their corresponding trim controls by the pilot or the automatic pilot.

(b) Lateral and directional trim. The airplane must maintain lateral and directional trim with the most adverse lateral displacement of the center of gravity within the relevant operating limitations during normally expected conditions of operation (including operation at any speed from 1.4 V_{S1} to V_{MO}/M_{MO}).

(c) Longitudinal trim. The airplane must maintain longitudinal trim during:

(1) A climb with maximum continuous power at a speed not more than 1.4 V_{S1}, with the landing gear retracted, and the flaps

(i) retracted, and

(ii) in the takeoff position.

(2) A power approach with a 3 degree angle of descent, the landing gear extended, and with:

(i) The wing flaps retracted and at a speed of 1.4 V_{S1}; and

(ii) The applicable airspeed and flap position used in showing compliance with special condition 15.

(3) Level flight at any speed from 1.4 V_{S1} to V_{MO}/M_{MO}, with the landing gear and flaps retracted, and from 1.4 V_{S1} to V_{LE} with the landing gear extended.

(d) Longitudinal, directional, and lateral trim. The airplane must maintain longitudinal, directional, and lateral trim (and for the lateral trim, the angle of bank may not exceed five degrees) at 1.4 V_{S1} during climbing flight with:

(1) The critical engine inoperative;

(2) The remaining engine at maximum continuous power or thrust; and

(3) The landing gear and flaps retracted.

20. Static Longitudinal Stability

Instead of compliance with § 23.173 (b) and (c), the following apply:

(a) The airspeed must return to within the tolerances specified when the control force is slowly released at any speed within the speed range specified in § 23.173(a). The applicable tolerances are:

(1) The airspeed must return to within plus or minus 10 percent of the original trim airspeed; and

(2) The airspeed must return to within plus or minus 7.5 percent of the original trim airspeed for the cruising condition specified in § 23.175(b) and special condition 21.

(b) The average gradient of the stable slope of the stick force versus speed curve may not be less than 1 pound for each 6 knots.

21. Demonstration of Static Longitudinal Stability

Instead of compliance with § 23.175(b)(2), the following apply:

(a) The stick force curve must have a stable slope at all speeds within a range that is the greater of 15 percent of the trim speed plus the resulting free return speed range or 50 knots plus the resulting free return speed range, above and below the trim speed, except that the speed range need not include speeds less than 1.4 V_{S1}, nor speeds greater than V_{FC}/M_{FC}, nor speeds greater that require a stick force more than 50 pounds, with:

(1) the wing flaps retracted;

(2) The center of gravity in the most adverse position;

(3) The most critical weight between the maximum takeoff and maximum landing weights;

(4) The maximum cruising power or thrust selected by the applicant as an operating limitation (see § 23.1521), except that the power or thrust need not exceed that required at V_{MO}/M_{MO}; and

(5) The airplane trimmed for level flight at the power or thrust required in subparagraph (4) of this section.

22. Static Directional and Lateral Stability

Instead of compliance with § 23.177, the following apply:

(a) The static directional stability (as shown by the tendency to recover from a skid with the rudder free) must be positive for any landing gear and flap position, and for any symmetrical power condition at speeds from 1.2 V_{S1} up to V_{FE}, V_{LE}, or V_{FC}/M_{FC} (as appropriate).

(b) The static lateral stability (as shown by the tendency to raise the low wing in a sideslip with the aileron controls free and for any landing gear position and flap position, and for any symmetrical power conditions) may not be negative at any airspeed (except speeds higher than V_{FE} or V_{LE}, when appropriate) in the following airspeed ranges:

(1) From 1.2 V_{S1} to V_{MO}/M_{MO}.

(2) From V_{MO}/M_{MO} to V_{FC}/M_{FC} unless the Administrator finds that the divergence is:

(i) Gradual;

(ii) Easily recognizable by the pilot; and

(iii) Easily controllable by the pilot.

(c) In straight, steady, sideslips (unaccelerated forward slips) the aileron and rudder control movements and forces must be substantially proportional to the angle of the sideslip. The factor or proportionality must lie between limits found necessary for safe operation throughout the range of sideslip angles appropriate to the operation of the airplane. At greater angles, up to the angle at which full rudder control is used or when a rudder pedal force of 180 pounds is obtained, the rudder pedal forces may not reverse and increased rudder deflection must produce increased angles of sideslip. Unless the airplane has a yaw indicator, there must be enough bank accompanying sideslipping to clearly indicate any departure from steady unyawed flight.

23. Wings Level Stall

Instead of compliance with § 23.201 (c) and (f), the following apply:

(a) The roll occurring between the stall and the completion of the recovery

may not exceed approximately 20 degrees.

(b) Compliance with the requirements of this section must be shown with:

(1) Power—

(i) Off; and

(ii) The thrust necessary to maintain level flight at 1.6 V_{S1} (where V_{S1} corresponds to the stalling speed with flaps in the approach position, the landing gear retracted, and maximum landing weight).

(2) Flaps and landing gear in any likely combination of positions.

(3) Trim at 1.4 V_{S1} or at the minimum trim speed, whichever is higher.

(4) Representative weights within the range for which certification is requested.

(5) The most adverse center of gravity for recovery.

24. Turning Flight and Accelerated Stalls

Instead of compliance with § 23.203(c), the following apply: Compliance with the requirements of this section must be shown with:

(a) The thrust necessary to maintain level flight at 1.6 V_{S1} (where V_{S1} corresponds to the stalling speed with flaps in the approach position, the landing gear retracted, and maximum landing weight).

(b) Flaps and landing gear in any likely combination of positions.

(c) Trim at 1.4 V_{S1} or at the minimum trim speed, whichever is higher.

(d) Representative weights within the range for which certification is requested.

(e) The most adverse center of gravity for recovery.

25. Stall Warning

Instead of compliance with § 23.207(c), the following apply:

(a) The stall warning must begin at a speed exceeding the stalling speed by not less than five knots. For stalls where the pitch control reaches the stop without uncontrollable downward pitching motion (i.e., minimum steady speed), a lesser margin is acceptable if the stall warning has enough clarity, duration, distinctiveness or similar properties.

(b) The stall warning margin must not be above a speed at which warning would become objectionable in the normal operating range (i.e., adequate maneuvering capability exists prior to stall warning to conduct normal maneuvers).

26. Vibration and Buffeting

Instead of compliance with § 23.251, the following apply:

(a) The airplane must be designed to withstand any vibration and buffeting that might occur in any likely operating condition. This must be shown by calculations, resonance tests, or other tests found necessary by the Administrator.

(b) Each part of the airplane must be shown in flight to be free from excessive vibration, under any appropriate speed and power or thrust conditions up to at least the minimum value of V_D allowed in § 23.335. The maximum speeds shown must be used in establishing the operating limitations of the airplane in accordance with special condition 30. In addition, it must be shown by analysis or tests that the airplane is free from such vibration that would prevent safe flight under the conditions in § 23.629(f).

(c) Except as provided in paragraph (d) of this special condition, there may be no buffeting condition, in normal flight, including configuration changes during cruise, severe enough to interfere with the control of the airplane, to cause excessive fatigue to the crew, or to cause structural damage. Stall warning buffeting within these limits is allowable.

(d) There may be no perceptible buffeting condition in the cruise configuration in straight flight at any speed up to V_{MO}/M_{MO}, except that stall warning buffeting is allowable.

(e) With the airplane in the cruise configuration, the positive maneuvering load factors at which the onset of perceptible buffeting occurs must be determined for the ranges of airspeed or Mach number, weight, and altitude for which the airplane is to be certified. The envelopes of load factor, speed, altitude, and weight must provide a sufficient range of speeds and load factors for normal operations. Probable inadvertent excursions beyond the boundaries of the buffet onset envelopes may not result in unsafe conditions.

27. High Speed Characteristics

Instead of compliance with § 23.253, the following apply:

(a) Speed increase and recovery characteristics. The following speed increase and recovery characteristics must be met:

(1) Operating conditions and characteristics likely to cause inadvertent speed increases (including upsets in pitch and roll) must be simulated with the airplane trimmed at any likely cruise speed up to V_{MO}/M_{MO}. These conditions and characteristics include gust upsets, inadvertent control movements, low stick force gradient in relation to control friction, passenger movement, leveling off from climb, and descent from Mach to airspeed limit altitudes.

(2) Allowing for pilot reaction time after effective inherent or artificial speed warning occurs, it must be shown that the airplane can be recovered to a normal attitude and its speed reduced to V_{MO}/M_{MO}, without:

(i) Exceptional piloting strength or skill;

(ii) Exceeding V_D/M_D or V_{DF}/M_{DF}, or the structural limitations; and

(iii) Buffeting that would impair the pilot's ability to read the instruments or control the airplane for recovery.

(3) There may be no control reversal about any axis at any speed up to V_{DF}/M_{DF}. Any reversal of elevator control force or tendency of the airplane to pitch, roll, or yaw must be mild and readily controllable, using normal piloting techniques.

(b) Maximum speed for stability characteristics, V_{FC}/M_{FC}. V_{FC}/M_{FC} is the maximum speed at which the requirements of special conditions 21 and 22 must be met with flaps and landing gear retracted. It may not be less than a speed midway between V_{MO}/M_{MO} and V_{DF}/M_{DF} except that, for altitudes where Mach number is the limiting factor, M_{FC} need not exceed the Mach number at which effective speed warning occurs.

28. Airspeed Indicating System

In addition to the requirements of § 23.1323, the following apply:

(a) The airspeed indicating system must be calibrated to determine the system error in flight and during the accelerate-takeoff ground run. The ground run calibration must be determined:

(1) From 0.8 of the minimum value of V_1 to the maximum value of V_2, considering the approved ranges of altitude and weight; and

(2) With the flaps and power settings corresponding to the values determined in the establishment of the takeoff path under special condition 13, assuming that the critical engine fails at the minimum value of V_1.

(b) Each system must have a heated pitot tube or an equivalent means of preventing malfunction due to icing.

(c) The information showing the relationship between IAS and CAS, determined in accordance with paragraph (a) of this special condition, must be shown in the Airplane Flight Manual.

29. Static Pressure System

In addition to the requirements of § 23.1325, the following apply:

(a) The altimeter system calibration required by § 23.1325(e) must be shown in the Airplane Flight Manual.

(b) If an altimeter system is fitted with a device that provides corrections to the altimeter indication, the device must be designed and installed in such manner that it can be bypassed when it malfunctions, unless an alternate altimeter system is provided. Each correction device must be fitted with a means for indicating the occurrence of reasonably probable malfunctions, including power failure, to the flight crew. The indicating means must be effective for any cockpit lighting condition likely to occur.

30. Maximum Operating Limit Speed

Instead of compliance with § 23.1505(c), the following applies: The maximum operating limit speed (V_{MO}/M_{MO} airspeed or Mach number, whichever is critical at a particular altitude) is a speed that may not be deliberately exceeded in any regime of flight (climb, cruise, or descent), unless a higher speed is authorized for flight test or pilot training operations. V_{MO}/M_{MO} must be established so that it is not greater than the design cruising speed V_C and so that it is sufficiently below V_D/M_D or V_{DF}/M_{DF}, to make it highly improbable that the latter speeds will be inadvertently exceeded in operations. The speed margin between V_{MO}/M_{MO} and V_D/M_D or V_{DF}/M_{DF} may not be less than that determined under § 23.335(b) or found necessary during the flight tests conducted under special condition 27.

31. Minimum Flight Crew

Instead of compliance with § 23.1523, the following apply:

The minimum flight crew must be established so that it is sufficient for safe operation considering:

(a) The workload on individual crewmembers and each crewmember workload determination must consider the following:

(1) Flight path control,

(2) Collision avoidance,

(3) Navigation,

(4) Communications,

(5) Operation and monitoring of all essential airplane systems,

(6) Command decisions, and

(7) The accessibility and ease of operation of necessary controls by the appropriate crewmember during all normal and emergency operations when at the crewmember flight station.

(b) The accessibility and ease of operation of necessary controls by the appropriate crewmember; and

(c) The kinds of operation authorized under § 23.1525.

32. Operating Limitations

Instead of the requirements of § 23.1583, the following apply:

(a) Airspeed limitations. The following airspeed limitations and any other airspeed limitations necessary for safe operation must be furnished:

(1) The maximum operating limit speed V_{MO}/M_{MO} and a statement that this speed limit may not be deliberately exceeded in any regime of flight (climb, cruise, or descent) unless a higher speed is authorized for flight test or pilot training.

(2) If an airspeed limitation is based upon compressibility effects, a statement to this effect and information as to any symptoms, the probable behavior of the airplane, and the recommended recovery procedures.

(3) The maneuvering speed V_A and a statement that full application of rudder and aileron controls, as well as maneuvers that involve angles of attack near the stall, should be confined to speeds below this value.

(4) The maximum speed for flap extension V_{FE} for the takeoff, approach, and landing positions.

(5) The landing gear operating speed or speeds, V_{LO}.

(6) The landing gear extended speed, V_{LE}, if greater than V_{LO}, and a statement that this is the maximum speed at which the airplane can be safely flown with the landing gear extended.

(b) Powerplant limitations. The following information must be furnished:

(1) Limitations required by § 23.1521.

(2) Explanation of the limitations, when appropriate.

(3) Information necessary for marking the instruments, required by § 23.1549 through § 23.1553.

(c) Weight and loading distribution. The weight and extreme forward and aft center of gravity limits required by §§ 23.25 and 23.1589 must be furnished in the Airplane Flight Manual. In addition, all of the following information must be presented either in the Airplane Flight Manual or in a separate weight and balance control and loading document, which is incorporated by reference in the Airplane Flight Manual:

(1) The condition of the airplane and the items included in the empty weight, as defined in accordance with § 23.29.

(2) Loading instructions necessary to ensure loading of the airplane within the weight and center of gravity limits, and to maintain the loading within these limits in flight.

(d) Maneuvers. Acrobatic maneuvers, including spins, are unauthorized.

(e) Maneuvering flight load factors. The positive maneuvering limit load factors for which the structure is proven, described in terms of accelerations, and a statement that these accelerations limit the angle of bank in turns and limit the severity of pull-up maneuvers, must be furnished.

(f) Flight crew. The number and functions of the minimum flight crew must be furnished.

(g) Kinds of operation. The kinds of operation (such as VFR, IFR, day, or night) in which the airplane may or may not be used, and the meteorological conditions (such as icing conditions) under which it may or may not be used, must be furnished. Any installed equipment that affects any operating limitation must be listed and identified as to operational function.

(h) Additional operating limitations must be established as follows:

(1) The maximum takeoff weights must be established as the weights at which compliance is shown with the applicable provisions of part 23 (including the takeoff climb provisions of special condition 14 (a) through (c) for altitudes and ambient temperatures).

(2) The maximum landing weights must be established as the weights at which compliance is shown with the applicable provisions of part 23 (including the approach climb and balked landing climb provisions of special conditions 14 and 16 for altitudes and ambient temperatures).

(3) The minimum takeoff distances must be established as the distances at which compliance is shown with the applicable provisions of part 23 (including the provisions of special conditions 10 and 12 for weights, altitudes, temperatures, wind components, and runway gradients).

(4) The extremes for variable factors (such as altitude, temperature, wind, and runway gradients) are those at which compliance with the applicable provision of part 23 is shown.

(i) Maximum operating altitude. The maximum altitude established under § 23.1527 must be furnished.

(j) Maximum passenger seating configuration. The maximum passenger seating configuration must be furnished.

(k) Maximum operating temperature. The maximum operating temperature established under § 23.1521 must be furnished.

33. Operating Procedures

Instead of the requirements of § 23.1585, the following applies:

(a) Information and instruction regarding the peculiarities or normal operations (including starting and warming the engines, taxiing, operation of wing flaps, landing gear, and the automatic pilot) must be furnished,

together with recommended procedures for:

(1) Engine failure (including minimum speeds, trim, operation of the remaining engine, and operation of flaps);

(2) Restarting turbine engines in flight (including the effects of altitude);

(3) Fire, decompression, and similar emergencies;

(4) Use of ice protection equipment;

(5) Operation in turbulence (including recommended turbulence penetration airspeeds, flight peculiarities, and special control instructions);

(6) Procedures for transition from landing approach to balked landing climb; and

(7) The demonstrated crosswind velocity and procedures and information pertinent to operation of the airplane in crosswinds.

(b) Information identifying each operating condition in which the fuel system independence prescribed in § 23.953 is necessary for safety must be furnished, together with instructions for placing the fuel system in a configuration used to show compliance with that section.

(c) For each airplane, showing compliance with § 23.1353 (g)(2) or (g)(3), the operating procedures for disconnecting the battery from its charging source must be furnished.

(d) If the unusable fuel supply in any tank exceeds 5 percent of the tank capacity, or 1 gallon, whichever is greater, information must be furnished which indicates that, when the fuel quantity indicator reads "zero" in level flight, any fuel remaining in the fuel tank cannot be used safely in flight.

(e) Information on the total quantity of usable fuel for each fuel tank must be furnished.

(f) The buffet onset envelopes determined under special condition 24 must be furnished. The buffet onset envelopes presented may reflect the center of gravity at which the airplane is normally loaded during cruise if corrections for the effect of different center of gravity locations are furnished.

34. Performance Information

Instead of compliance with subparagraphs § 23.1587 (a)(5), (a)(6), (a)(7), (a)(8), (c)(4), and (c)(5), the following apply:

(a) Each Airplane Flight Manual must contain the performance information computed under the applicable provisions of part 23 (including special conditions 8 through 17 for the weights, altitudes, temperatures, wind components, and runway gradients, as applicable) within the operational limits of the airplane, and must contain the following:

(1) The conditions under which the performance information was obtained, including the speeds associated with the performance information;

(2) Procedures established under special condition 7 that are related to the limitations and information required by special condition 32 and by this special condition. These procedures must be in the form of guidance material, including any relevant limitations or information;

(3) An explanation of significant or unusual flight or ground handling characteristics of the airplane.

35. Airspeed Indicator

Instead of compliance with § 23.1545, the following applies:

The following markings must be made on each airspeed indicator:

A maximum allowable airspeed indication showing the variation of V_{MO}/M_{MO} with altitude or compressibility limitations (as appropriate), or a radial red line marking for V_{MO}/M_{MO} must be made at the lowest value of V_{MO}/M_{MO} established for any altitude up to the maximum operating altitude for the airplane.

36. Effects of Contamination on Natural Laminar Flow Airfoils

In the absence of specific requirements for airfoil contamination, airplane airfoil designs that have airfoil pressure gradient characteristics and smooth aerodynamic surfaces that may be capable of supporting natural laminar flow must comply with the following:

(a) It must be shown by tests, or analysis supported by tests, that the airplane complies with the requirements of §§ 23.141 through 23.149, 23.153 through 23.207, 23.233, 23.251 through 23.253, and special conditions 19 through 27 with any airfoil contamination that would normally be encountered in service and that would cause significant adverse effects on the handling qualities of the airplanes resulting from the loss of laminar flow.

(b) Significant performance degradations identified as resulting from the loss of laminar flow must be provided as part of the information required by special conditions 33 and 34.

37. For the purpose of these special conditions, the following definitions apply:

(1) Critical Functions. Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

(2) Essential Functions. Functions whose failure would contribute to or would cause a hazardous failure condition that would significantly impact the safety of the airplane or the ability of the flight crew to cope with adverse operating conditions.

38. Instead of complying with § 23.1581(b), the following applies:

Approved Information.

a. Each part of the Airplane Flight Manual containing information prescribed in §§ 23.1583 through 23.1589 must be approved, segregated, identified and clearly distinguished from each unapproved part of that Airplane Flight Manual.

b. Each page of the Airplane Flight Manual containing information prescribed in this section must be of a type that is not easily erased, disfigured, or misplaced, and is capable of being inserted in a manual provided by the applicant, or in a folder, or in any other permanent binder.

Issued in Kansas City, Missouri on September 20, 1991.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-23448 Filed 9-27-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91-CE-13-AD; Amendment 39-8042; AD 91-20-08]

Airworthiness Directives; Beech Models F33A, F33C, V35B, A36, A36TC, and B36TC Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Beech Models F33A, F33C, V35B, A36, A36TC, and B36TC airplanes. This action requires a one-time inspection and modification to the cabin fresh air blower installation. Blower housing attachments have failed on several of the affected airplanes. The actions specified by this AD are intended to prevent blower housing failures, which could lead to blower impingement on the flight control cables located below the blower and possible loss of control of the airplane.

DATES: Effective October 31, 1991. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 31, 1991.

ADDRESSES: Beech Service Bulletin No. 2360, revised April 1991, that is discussed in this AD may be obtained from the Beech Aircraft Corporation,

P.O. Box 85, Wichita, Kansas 67201–0085.

This information may also be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Engler, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport road, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946–4409.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an AD that is applicable to certain Beech Models F33A, F33c, V35B, A36, A36TC, and B36TC airplanes was published in the **Federal Register** on May 28, 1991 (56 FR 24042). The action proposed a one-time inspection and modification to the cabin fresh air blower installation in accordance with the instructions in Beech Service Bulletin No. 2380, revised April 1991.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public. After careful review of all the available information, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. These minor corrections will not change the meaning of the AD nor add any additional burden upon the public than was already proposed.

It is estimated that 1,786 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 8 hours per airplane to accomplish the required action, and that the average labor rate is approximately $55 an hour. Parts cost approximately $300 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,321,640.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **"ADDRESSES".**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

AD 91–30–08 Beech: Amendment 39–8042; Docket No. 91–CE–13–AD.

Applicability: The following model and serial number airplanes that are equipped with an optional fresh air blower, certificated in any category:

Model	Serial Nos.
F33A	CE–941 through CE–1555.
F33C	CJ–156 through CJ–179.
V35B	D–10348, and D–10364 through D–10403.
A36	E–1809 through E–2592.
A36TC and B36TC	EA–192 through EA–514.

Compliance: Required within the next 50 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent fresh air blower housing failure, which could lead to blower impingement on the flight control cables located below the blower and possible loss of control of the airplane, accomplish the following:

(a) Inspect and modify as required the attachment of the fresh air blower housing in accordance with the instructions and the criteria contained in Beech Service Bulletin No. 2380, revised April 1991.

(b) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita Aircraft Certification Office.

(d) The inspection and modification required by this AD shall be done in accordance with Beech Service Bulletin No. 2380, revised April 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 1100 L Street, NW.; room 8401, Washington, DC.

This amendment becomes effective on October 31, 1991.

Issued in Kansas City, Missouri, on September 9, 1991.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91–23449 Filed 9–27–91; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 510

Animal Drugs, Feeds, and Related Products; Change of Sponsor Name and Address

AGENCY: Food and Drug Administration. HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor name and address from Cadco, Inc., to Triple "F," Inc.

EFFECTIVE DATE: September 30, 1991.

FOR FURTHER INFORMATION CONTACT: Benjamin Puyot, Center for Veterinary Medicine (HFV–130), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8646.

SUPPLEMENTARY INFORMATION: Cadco, Inc., P.O. Box 3599, 10100 Douglas Ave., Des Moines, IA 50322, has advised FDA of a change of sponsor name and address from Cadco, Inc., to Triple "F,"

Inc. The agency is amending the regulations in 21 CFR 510.600(c)(1) and (c)(2) to reflect this change.

List of Subjects in 21 CFR Part 510

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

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

PART 510—NEW ANIMAL DRUGS

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

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

2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in the table in paragraph (c)(1) by removing the entry for "Cadco, Inc." and by alphabetically adding a new entry for "Triple 'F,' Inc.," and in the table in paragraph (c)(2) in the entry for "011490" by revising the sponsor name and address to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * * * *	
Triple "F," Inc., 10104 Douglas Ave., Des Moines, IA 50322	011490
* * * * *	

(2) * * *

Drug labeler code	Firm name and address
* * * * *	
011490	Triple "F," Inc., 10104 Douglas Ave., Des Moines, IA 50322.
* * * * *	

Dated: September 23, 1991.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 91-23443 Filed 9-27-91; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Parts 558

New Animal Drugs for use in Animal Feeds; Bambermycins

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Hoechst-Roussel Agri-Vet Co. The supplement provides for the use of a 4-gram-per-pound (g/lb) bambermycins Type A medicated article to make Type C broiler chicken, growing turkey, and growing-finishing swine feeds.

EFFECTIVE DATE: September 30, 1991.

FOR FURTHER INFORMATION CONTACT: William G. Marnane, Center for Veterinary Medicine (HFV-143), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8678.

SUPPLEMENTARY INFORMATION: Hoechst-Roussel Agri-Vet Co., Route 202-206 North, P.O. Box 2500, Somerville, NJ 08876-1258, has filed a supplement to NADA 44-759. The supplement provides for use of a 4-g/lb bambermycins Type A medicated article in addition to the currently approved use of 2 and 10 g/lb bambermycins Type A medicated articles to make Type C feeds for broiler chickens, growing turkeys, and growing-finishing swine. The supplement is approved and the regulations are amended in 21 CFR 558.95(a)(1) to reflect the approval.

In addition, the regulations are amended in § 558.95 by correcting the heading in paragraph (b)(1) to read "Broiler chickens" and in paragraph (b)(2) to read "Growing-finishing swine."

This is a Category II supplement that did not require reevaluation of the underlying safety and effectiveness data in the parent application. Because of this, and because the sponsor was not required to submit new safety and effectiveness data, a freedom of information summary was not required.

As provided in 21 CFR 558.4(a), bambermycins are Category I drugs, which as the sole drug ingredient, do not require an approved Form FDA 1900 for making Type C feeds as in approved NADA 44-759 and in 21 CFR 558.95, as amended herein.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), this supplement does not qualify for marketing exclusivity because neither new clinical or field studies, nor human food safety studies, were required for its approval.

The agency has determined under 21 CFR 25.24(d)(1)(iii) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

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

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

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

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

2. Section 558.95 is amended by revising paragraph (a)(1) and the paragraph headings in paragraphs (b)(1) and (b)(2) to read as follows:

§ 558.95 Bambermycins.

(a) * * *

(1) 2, 4, and 10 grams of activity per pound to 012799 in § 510.600(c) of this chapter for use as in paragraphs (b)(1), (b)(2), and (b)(3) of this section.

* * * * *

(b) * * * (1) *Broiler chickens.* * * *

(2) *Growing-finishing swine.* * * *

* * * * *

Dated: September 23, 1991.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 91-23524 Filed 9-27-91; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD5-91-045]

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, Albemarle and Chesapeake Canal, Chesapeake, Virginia

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the regulations that govern the operation

of the Centerville Turnpike drawbridge across the Atlantic Intracoastal Waterway, Albemarle and Chesapeake Canal, mile 15.2, in Chesapeake, Virginia, by limiting current bridge openings for recreational boats during daylight hours, seven-days a week, year-round. The changes to these regulations are, to the extent practical and feasible, intended to provide for regularly scheduled drawbridge openings to help reduce motor vehicle traffic delays and congestion on the roads and highways linked by this drawbridge.

EFFECTIVE DATE: These regulations become effective on October 30, 1991.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, at (804) 398–6222.

SUPPLEMENTARY INFORMATION: On June 11, 1991, the Coast Guard published a notice of proposed rulemaking (56 FR 26792) concerning operation of the Centerville Turnpike Bridge. Interested persons were given until July 26, 1991, to submit comments on the proposed rule. The Commander, Fifth Coast Guard District also published the proposal as a Public Notice on June 12, 1991. Interested persons were given until July 25, 1991, to submit comments. No public hearing was held since no requests for a hearing were received.

Drafting Information

The drafters of this notice are Linda L. Gilliam, project officer, and LT Monica L. Lombardi, project attorney, Fifth Coast Guard District.

Discussion of Regulations

Members of the motoring public have requested that the regulations governing operation of the drawbridge across the Atlantic Intracoastal Waterway, Albemarle and Chesapeake Canal at mile 15.2 in Chesapeake, Virginia be amended to limit openings of the Centerville Turnpike Bridge to help reduce highway traffic congestion. This change to the regulations will limit openings of the draw for recreational vessels to every hour and half-hour from 7 a.m. to 7 p.m., seven-days a week. Commercial vessels will be allowed passage any time. During the comment period for the proposed rule and the Public Notice, written comments were received from the motoring public. All comments were in favor of the proposed limitations on the Centerville Turnpike Bridge. No comments were received from waterway users for or against the proposed regulation. The Coast Guard feels that imposition of this final rule will not unduly restrict vessel passage through the bridge, as half-hourly openings are not overly restrictive and vessel operators can plan transits around this schedule.

Federal Assessment

This notice has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this final rule will not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Evaluation

This regulation is not major under Executive Order 12291 and not significant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of these regulations on commercial navigation or on any industries that depend on waterborne transportation will be non-existent since commercial vessels may transit the bridge at any time. Although recreational vessels may transit the bridge only on the hour and half-hour, the Coast Guard believes these restrictions will have no economic impact on these vessels or on the marinas that serve them.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the U.S. Coast Guard must consider whether proposed rules will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). The Coast Guard believes these regulations will have no adverse impact on small entities.

Environmental Impact

This rulemaking has been thoroughly reviewed by the Coast Guard and it has been determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.g.5 of Commandant Instruction M16475.1B. A Categorical Exclusion Determination statement has been prepared and placed in the rulemaking docket for inspection or copying where indicated under "ADDRESSES".

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 117 of title 33, Code of Federal Regulations to read as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.997 is amended by adding a new paragraph (e) to read as follows:

§ 117.997 Atlantic Intracoastal Waterway, South Branch of the Elizabeth River to the Albemarle and Chesapeake Canal.

* * * * *

(e) The draw of the Centerville Turnpike (SR 170) bridge across the Albemarle and Chesapeake Canal, mile 15.2, at Chesapeake, shall open on signal; except that, from 7 a.m. to 7 p.m., the draw need only be opened on the hour and half-hour, seven days a week year-around, for the passage of pleasure craft. Public vessels of the United States, commercial vessels, and vessels in an emergency condition which present danger to life or property shall be passed at any time.

Dated: September 12, 1991.

W.T. Leland,

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

[FR Doc. 91–23339 Filed 9–27–91; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[CGD1 91–146]

Safety Zone Regulations: Lower Hudson River, New York and New Jersey

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

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

EFFECTIVE DATE: This regulation becomes effective at 8:30 p.m., 13 October 1991. It terminates at 9:30 p.m, 13 October 1991.

FOR FURTHER INFORMATION CONTACT: MST1 S. Whinham of Captain of the Port, New York (222) 668–7934.

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

Drafting Information

The drafters of this regulation are LTJG C.W. JENNINGS, project officer, Captain of the Port New York, and LT JOHN B. CATELY, project attorney, First Coast Guard District Legal Office.

Discussion of Regulation

The circumstances requiring this regulation result from the possible dangers and hazards to navigation associated with a fireworks display. This regulation is effective from 8:30 p.m., 13 October 1991 to 9:30 p.m., 13 October 1991. This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of Part 165.

List of Subjects in 33 CFR Part 165

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

Regulation

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

PART 165—[AMENDED]

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

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

2. A new temporary § 165.T1146 is added to read as follows:

§ 165.T1146 Safety Zone: Lower Hudson River, New York and New Jersey.

(a) *Location.* The following area has been declared a Safety Zone: All waters within a 300 yard radius of the fireworks barge located at 40°43'17" North and 74°01'12" West in the lower Hudson River.

(b) *Effective date.* This regulation becomes effective at 8:30 p.m., 13 October 1991. It terminates at 9:30 p.m., 13 October 1991.

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

Dated: September 12, 1991.

R.M. Larrabee,

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

[FR Doc. 91–23341 Filed 9–27–91; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 165

[COTP Wilmington, NC Reg. 91–010]

Safety Zone Regulations: Cape Fear River, Southport, NC

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone in the Atlantic Intracoastal Waterway and the Cape Fear River in the vicinity of the Southport Yacht Basin in downtown Southport, North Carolina. The safety zone is needed to protect the public, vessels and property from safety hazards associated with the filming of a commercially sponsored movie on the Cape Fear River. Entry into this zone is prohibited during actual filming unless authorized by the Captain of the Port, Wilmington, North Carolina, or his designated representative.

EFFECTIVE DATE: This regulation is effective as needed from 6 a.m. to 6 p.m. on September 16, 17, 18, 20, 30 and October 8, 1991, unless sooner terminated by the Captain of the Port, Wilmington, North Carolina.

FOR FURTHER INFORMATION CONTACT: LCDR P.A. RICHARDSON, USCG, c/o U.S. Coast Guard Captain of the Port, suite 500, 272 N. Front Street, Wilmington, North Carolina 28401–3907, phone: (919) 343–4881.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) 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's interest since immediate action is necessary to prevent possible damage to people, vessels and property in the area.

Drafting Information

The drafters of this regulation are LTJG V.A. HUYCK, project officer for the Captain of the Port, Wilmington, North Carolina, and LT M.L. LOMBARDI, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulation

The event requiring this regulation will occur on September 16, 17, 18, 20, 30, and October 8, 1991. The Christopher Morgan Company will be filming on the Cape Fear River between the hours of 6 a.m. and 6 p.m. on the dates indicated above. Commercial traffic will not be severely impeded due to the fact that vessels will be allowed to pass when actual filming is not in progress. The filming of a movie and the positioning of movie equipment constitute a potential hazard to the public, vessels, and property in the vicinity. This safety zone is needed to protect the public from the hazards associated with this film project as well as to protect the film crew during actual filming.

List of Subjects in 33 CFR Part 165

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

Regulation

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

PART 165—[AMENDED]

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

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

2. In part 165, a new temporary § 165.T05–010 is added, to read as follows:

§ 165.T05–010 Atlantic Intracoastal Waterway, Cape Fear River, Southport, North Carolina.

(a) *Location.* The following area is a safety zone: The waters of the Atlantic Intracoastal Waterway commencing approximately at lighted buoy "1" of the Southport Yacht Basin east to lighted buoy "14A" of the Cape Fear River. This safety zone is bounded by the following latitudes and longitudes (see Chart Number 11537):

(1) Latitude: 33–55'00" N; Longitude 78–01'35" W.

(2) Latitude: 33–54'30" N; Longitude 78–01'35" W.

(3) Latitude: 33–54'30" N; Longitude 78–01'00" W.

(4) Latitude: 33–55'00" N; Longitude 78–01'00" W.

(b) *Definitions.* The designated representative of the Captain of the Port is any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port, Wilmington, North Carolina to act on his behalf. The following officers have or will be designated by the Captain of the Port: the Coast Guard Patrol

Commander, the senior boarding officer on each vessel enforcing the safety zone, and the Duty Officer at the Marine Safety Office, Wilmington, NC.

(1) The Captain of the Port and the Duty Officer at the Marine Safety Office, Wilmington, North Carolina can be contacted at telephone number (919) 343–4895.

(2) The Coast Guard Patrol Commander and the senior boarding officer on each vessel enforcing the safety zone can be contacted on VHF–FM channels 16 and 81.

(c) *Local Regulations.* Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(1) The operator of any vessel in the immediate vicinity of this safety zone shall:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard Ensign.

(ii) Proceed as directed by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard Ensign.

(2) Any spectator vessel may anchor outside of the regulated area specified in paragraph (2)(a) of these regulations, but may not block a navigable channel.

(d) *Effective Periods.* This regulation is effective during actual filming from 6 a.m. to 6 p.m. on September 16, 17, 18, 20, 30 and October 8, 1991, unless sooner terminated by the Captain of the Port, Wilmington, North Carolina.

Dated: September 13, 1991.

C.F. Eisenbeis,

Captain, U.S. Coast Guard, Captain of the Port, Wilmington, NC.

[FR Doc. 91–23340 Filed 9–27–91; 8:45 am]

BILLING CODE 4910–14–M

LIBRARY OF CONGRESS

36 CFR Part 704

National Film Preservation Board; 1991 Films Selected for Inclusion in the National Film Registry

AGENCY: National Film Preservation Board, Library of Congress.

ACTION: Final rule.

SUMMARY: The Librarian of Congress is publishing the following list of films for 1991 for inclusion in the National Film Registry in the Library of Congress pursuant to section 3 of Public Law 100–446, The National Film Preservation Act of 1988, 2 U.S.C. 178. The films are published to notify the public of the Librarian's selection of twenty-five films deemed to be "culturally, historically or aesthetically significant" in accordance with Congress' mandate. The two goals of the Librarian in administering the Act are the promotion of film as an art form and the generation of more public interest in the preservation of America's film.

EFFECTIVE DATE: September 30, 1991.

FOR FURTHER INFORMATION CONTACT: Eric Schwartz, Counsel, The National Film Preservation Board, Library of Congress, Washington, DC 20540. Telephone (202) 707–8350.

SUPPLEMENTARY INFORMATION: On August 9, 1990 (55 FR 32567), the Librarian of Congress published the list of films for 1989 for inclusion in the National Film Registry in the Library of Congress. On December 24, 1990 (55 FR 52844) the Librarian published the list of films for 1990. Today, the Librarian publishes the third and final list of twenty-five films for inclusion in the National Film Registry.

In addition, on August 9, 1990 (55 FR 32567), the Librarian published final guidelines for the labeling of the films selected for inclusion in the Registry. Those guidelines became effective for the 1989 list of films on September 24, 1990 and for the 1990 list of films on February 7, 1991.

Barring a congressional reauthorization of the provisions of the Act, the Act and all of its provisions including film labeling guidelines will no longer have any effect at midnight on September 26, 1991. Therefore the labeling guidelines will not be applicable to the 1991 list of films and will cease their application to the 1989 and 1990 lists as well.

Background

A. Twenty-Five Films Registered in 1991 in the National Film Registry

Under section 3(a)(2)(A) of the Act, 2 U.S.C. 178b, the Librarian after consultation with the Board shall determine "which films satisfy the criteria developed pursuant to paragraph 3(a)(1)(A), and qualify to be included in the National Film Registry" and shall select no more than twenty-five films per year for inclusion in such Registry. The criteria for the selection of films and the procedures used to enlist the public's nominations of these films were promulgated in the **Federal Register** on August 9, 1990 (55 FR 32566).

During the 1991 selection process, the National Film Preservation Board received 1,059 film titles from the general public and reduced the list to twenty-five film titles for consideration by the Librarian of Congress after meeting on June 13, 1991 in Washington, DC. Today the Librarian of Congress, Dr. James H. Billington, after consultation with the National Film Preservation Board, formally registers these films in the National Film Registry so that they can take their place with the fifty titles registered in 1989 and 1990. This final list of seventy-five films completes the Librarian's responsibilities for selecting films under the 1988 Act.

B. Labeling Guidelines Applicability to the 1991 Films

The film labeling guidelines published on August 9, 1990 (55 FR 32567) would ordinarily be applicable to these films forty-five days after this publication in the **Federal Register**. However, the Act and all of its provisions expire at midnight on September 26, 1991 in accordance with section 13, 2 U.S.C. 1781, so the labeling guidelines will not become applicable for this list of twenty-five films, and will no longer be applicable for the 1989 and 1990 films on that date.

In addition, the provisions of section 3(a)(2)(C), 2 U.S.C. 178b, with regard to the use of the seal of the National Film Registry will not be applicable for these twenty-five films nor for the 1989 or 1990 films at the expiration of the Act.

Regulatory Flexibility Act

With respect to the Regulatory Flexibility Act, the Librarian takes the position that this Act does not apply to Library of Congress rule-making. The Library of Congress is a part of the legislative branch. The Library of Congress is not an "agency" with the meaning of the Administrative Procedure Act of June 11, 1946, as amended (title 5, chapter of the U.S. Code, subchapter II and chapter 7). The Regulatory Flexibility Act consequently does not apply to the Library of Congress since that Act affects only those entities of the Federal Government that are agencies as defined in the Administrative Procedure Act.

List of Subjects in 36 CFR Part 704

Libraries, Motion pictures.

Publication of 1991 Film Titles

In consideration of the foregoing, 36 CFR part 704 is amended in the manner set forth below.

PART 704—NATIONAL FILM REGISTRY OF THE LIBRARY OF CONGRESS

1. The authority citation for 36 CFR part 704 continues to read as follows:

Authority: Pub. L. 100–446, 102 Stat. 1782 (2 U.S.C. 178).

Subpart A—Films Selected For Inclusion in the National Film Registry

2. In subpart A, § 704.22 is added to read as follows:

§ 704.22 Films Selected for Inclusion in the National Film Registry in the Library of Congress for 1991.

(a) The Librarian of Congress, Dr. James H. Billington, after consultation with the National Film Preservation Board registers these films in the National Film Registry within the Library of Congress for 1991:

(1) 2001: A Space Odyssey (1968)
(2) Battle Of San Pietro, The (1945)
(3) Blood Of Jesus, The (1941)
(4) Chinatown (1974)
(5) City Lights (1931)
(6) David Holzman's Diary (1968)
(7) Frankenstein (1931)
(8) Gertie The Dinosaur (1914)
(9) Gigi (1958)
(10) Greed (1924)
(11) High School (1968)
(12) I Am A Fugitive From A Chain Gang (1932)
(13) Italian, The (1915)
(14) King Kong (1933)
(15) Lawrence Of Arabia (1962)
(16) Magnificent Ambersons, The (1942)
(17) My Darling Clementine (1946)
(18) Out Of The Past (1947)
(19) Place In The Sun, A (1951)
(20) Poor Little Rich Girl (1917)
(21) Prisoner of Zenda, The (1937)
(22) Shadow Of A Doubt (1943)
(23) Sherlock, Jr. (1924)
(24) Tevye (1939)
(25) Trouble In Paradise (1932)

(b) In keeping with section 3(c) of the Act, 2 U.S.C. 178b, the Librarian will endeavor to obtain an archival quality copy for each of these twenty-five films for the National Film Board Collection in the Library of Congress.

Dated: September 25, 1991.

Approved by:

James H. Billington,

Librarian of Congress.

[FR Doc. 91–23472 Filed 9–27–91; 8:45 am]

BILLING CODE 1410–18–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[RI–4–1–5255; A–1–FRL–4011–8]

Approval and Promulgation of Air Quality Implementation Plans; Rhode Island; Revised Regulations for Controlling Volatile Organic Compound Emissions and Adoption of a Continuous Emissions Monitoring Regulation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving State Implementation Plan (SIP) revisions submitted by the State of Rhode Island. These revisions consist of revised volatile organic compound (VOC) emission regulations applicable in the entire State of Rhode Island and a regulation for continuous emissions monitoring (CEM). The intended effect of this action is to approve Rhode Island's revised VOC regulations and to approve Rhode Island's CEM regulation. This action is being taken in accordance with section 110 and part D of the Clean Air Act.

EFFECTIVE DATE: This rule will become effective on October 30, 1991.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, One Congress Street, 10th floor, Boston, MA; Public Information Reference Unit, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; and the Division of Air and Hazardous Materials, Department of Environmental Management, 291 Promenade Street, Providence, RI 02908–5767.

FOR FURTHER INFORMATION CONTACT: Joanne Donoghue (617) 565–3270; FTS 835–3270.

SUPPLEMENTARY INFORMATION: On November 3, 1989, November 21, 1989, February 1, 1990, and September 19, 1990, the Rhode Island Department of Environmental Management (DEM) submitted revisions to its SIP. The revisions consist of revised VOC emission regulations and a revised regulation requiring CEM. On November 20, 1991 (55 FR 48246), EPA published a notice of proposed rulemaking (NPR) for the State of Rhode Island. The NPR proposed approval of State Implementation Plan (SIP) revisions submitted by the State of Rhode Island.

On May 25, 1988, EPA sent a letter to Edward DiPrete, then Governor of Rhode Island, pursuant to section 110(a)(2)(H) of the Clean Air Act, as amended, notifying him that the Rhode Island SIP was substantially inadequate to achieve the National Ambient Air Quality Standard (NAAQS) for ozone in the entire State. EPA requested the State to respond to the SIP call in two phases—the first in the near future and the second following EPA's issuance of a final policy on how the States should correct their SIPs. The first phase of the response to the SIP call consists of (1) correcting identified deficiencies in the existing SIP's VOC regulations, (2) adopting VOC regulations previously required or committed to but never adopted, and (3) updating the area's base year emissions inventory.

On June 16, 1988, EPA sent a letter to the Chief of the Rhode Island Department of Environmental Management's (DEM) Division of Air and Hazardous Materials outlining the changes that needed to be made to Rhode Island's existing VOC regulations to make them consistent with EPA national guidance. On November 3, 1989, November 21, 1989, February 1, 1990, and September 19, 1990, the Rhode Island DEM submitted revised VOC regulations in response to EPA's May 25 and June 16, 1988 letters.

Additionally, the State of Rhode Island adopted a CEM regulation consistent with 40 CFR 51.214 and 40 CFR part 51, appendix P. The CEM regulation was adopted pursuant to an EPA requirement that CEM be installed on certain sources as outlined in appendix P. A complete discussion of all of EPA's requirements regarding CEM and Rhode Island's CEM regulation is contained in the Technical Support Document prepared for the notice of proposed rulemaking for this revision, which is available from the EPA Regional Office listed in the ADDRESSES section of this notice.

Rhode Island has requested that EPA approve versions of the regulations that were not explicitly approved by its Secretary of State. The difference between the version approved by the Secretary of State and version the DEM has requested that EPA approve is that the former regulates compounds which EPA has exempted from control because of negligible photochemical reactivity. EPA will not approve regulation of these negligibly reactive compounds as part of the SIP. Rhode Island's intensions were clearly explained in the cover letter submitting its SIP proposal to EPA and, in all cases, Rhode Island's adopted version of the regulations is as stringent

as EPA's requirements. However, EPA cannot approve the version of the regulation which was not officially adopted by the State. Therefore, EPA will act only on those portions of the adopted version of the State regulations which are approvable. EPA will take no action on the sections of the regulations which the DEM clearly did not intend to submit for EPA approval.

EPA's review of the SIP submittal indicates that Rhode Island has addressed all other necessary regulatory amendments in the existing VOC regulations as identified by EPA in its SIP call letters. EPA is approving the Rhode Island SIP revisions containing the revised VOC regulations in Rhode Island's Air Pollution Control Regulations Numbers 11, 15, 18, 19, and 21, which were submitted on November 3, 1989, November 21, 1989, February 1, 1990 and September 19, 1990. EPA is taking no action on those portions of the DEM regulations that regulate negligibly photochemically reactive VOCs. Additionally, EPA is approving amendments to Air Pollution Control Regulation Number 6 which contains requirements for CEM.

On November 20, 1990, EPA proposed approval of the Rhode Island SIP revisions. EPA based this proposed approval on a determination that the submittal addressed the deficiencies and inconsistencies in the existing VOC regulations as those deficiencies were indicated in the May 25, 1988, SIP call letter. Therefore, EPA also determined that the submittal conformed to EPA's then existing guidance.

At the same time that EPA was finalizing its proposed approval of the Rhode Island revisions, Congress enacted the Clean Air Act Amendments of 1990 (Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q). In the amended Act, Congress codified the requirement that States revise their SIPs for ozone nonattainment areas so that the SIPs conform with EPA's preamendment guidance (section 182(a)(2)(A)). EPA however, is not addressing in this final rulemaking action whether Rhode Island's SIP revision meets the statutory requirement of section 182(a)(2)(A). Rather, EPA is taking final action, approving the submittal under section 110 and part D of the Clean Air Act on the basis that it is consistent with EPA's guidance as that guidance existed at the time of the proposed rulemaking, November 20, 1990. Moreover, EPA is approving the SIP revisions because they strengthen the existing SIP and make it more enforceable.

The specific content of the revised regulations and the rationale for EPA's action were explained in the NPR and will not be restated here. No adverse public comments were received on the NPR.

Final Action

EPA is approving the SIP revisions submitted by Rhode Island on November 3, 1989, November 21, 1989, February 1, 1990, and September 19, 1990. EPA is not addressing today whether this action meets the specific requirements of section 182(a)(2)(A). These revisions amend Rhode Island's VOC regulations and adopt requirements for continuous emissions monitoring.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225).

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 29, 1991. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

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

Dated: September 16, 1991.

Julie Belaga,

Regional Administrator, Region I.

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

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7642.

Subpart OO—Rhode Island

2. Section 52.2070 is amended by adding paragraph (c)(37) to read as follows:

§ 52.2070 Identification of plan.

* * * * *

(c) * * *

(37) Revisions to the State Implementation Plan submitted by the Rhode Island Department of Environmental Management dated November 3, 1989, November 21, 1989, February 1, 1990 and September 19, 1990.

(i) Incorporation by reference. (A) Letters from the Rhode Island Department of Environmental Management dated November 3, 1989, November 21, 1989, February 1, 1990 and September 19, 1990 submitting revisions to the Rhode Island State Implementation Plan.

(B) Amendments to Rhode Island's Air Pollution Control Regulation Number 6, amended and effective November 22, 1989.

(C) Amendments to Rhode Island's Air Pollution Control Regulation Numbers 11; 15, excluding subsections 15.1.16 and 15.2.2; 18, excluding subsections 18.1.8, 18.2.1, 18.3.2(d), 18.3.3(f), and 18.5.2; 19, excluding subsections 19.1.11, 19.2.2, and 19.3.2(a); and 21, except subsections 21.1.15 and 21.2.2, and portion of subsection 21.5.2(h) which states "equivalent to" in the parenthetical, amended and effective December 10, 1989.

3. In § 52.2081, table 52.2081 is amended by adding the following entries to the end of the listings for "No. 6", "No. 11", "No. 15", "No. 18", "No. 19", and "No. 21" to read as follows:

§ 52.2081 EPA-approved EPA Rhode Island State regulations.

* * * * *

TABLE 52.2081.—EPA-APPROVED RULES AND REGULATIONS

State citation	Title/subject	Date adopted by State	Date approved by EPA	FR citation	52.2070	Comments/unapproved section
No. 6	Opacity monitors	11/22/89	September 30, 1991	[FR citation from published date].	(c)(37)	Amended Regulation No. 6.
No. 11	Petroleum liquids marketing and storage.	12/10/89	September 30, 1991	[FR citation from published date].	(c)(37)	Amended Regulation No. 11.
No. 15	Control of organic solvent emissions.	12/10/89	September 30, 1991	[FR citation from published date].	(c)(37)	Amended Regulation No. 15, except subsections 15.1.16 and 15.2.2.
No. 18	Control of emissions from solvent metal cleaning.	12/10/89	September 30, 1991	[FR citation from published date].	(c)(37)	Amended Regulation No. 18, except subsections 18.1.8, 18.2.1, 18.3.2(d), 18.3.3(f), and 18.5.2.
No. 19	Control of VOCs from surface coating operations.	12/10/89	September 30, 1991	[FR citation from published date].	(c)(37)	Amended Regulation No. 19, except subsections 19.1.11, 19.2.2, and 19.3.2(a).
No. 21	Control of VOCs from printing operations.	12/10/89	September 30, 1991	[FR citation from published date].	(c)(37)	Amended Regulation No. 21, except subsections 21.1.15 and 21.2.2, and portion of 21.5.2(h) which states "equivalent to" in the parenthetical.

[FR Doc. 91-23365 Filed 9-27-91; 8:45 am]
BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6880

[OR-943-4214-10; GP1-163; OR-44954]

Withdrawal of National Forest System Lands for the Pringle Falls Experimental Forest and Research Natural Areas; OR

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 11,675.51 acres of National Forest System lands in the Deschutes National Forest from mining for a period of 20 years to protect the Forest Service's Pringle Falls Experimental Forest and Research Natural Areas. The lands have been and remain open to such forms of disposition as may by law be made of National Forest System lands and to mineral leasing.

EFFECTIVE DATE: September 30, 1991.

FOR FURTHER INFORMATION CONTACT: Linda Sullivan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon, 97208, 503-280-7171.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following described National Forest System lands are hereby withdrawn from location and entry under the United States mining laws (30 U.S.C. ch. 2), but not from leasing under the mineral leasing laws, to protect Forest Service experimental forest and research natural areas:

Willamette Meridian

Deschutes National Forest

T. 20 S., R. 9 E.,
Sec. 28, SW¼;
Sec. 29, S½;
Sec. 30, E½SW¼ and SE¼;
Sec. 31, E½ and E½W½;
Sec. 32;
Sec. 33, W½NE¼, SE¼NE¼, W½, and SE¼;
Sec. 34, SW¼SW¼.
T. 21 SW., R. 9 E.,
Sec. 4, lots, 1, 2, 3, and 4, and S½N½;
Sec. 5, lots 1, 2, 3, and 4, and S½N½;
Sec. 6, lots 1 to 5, inclusive, S½NE¼, and SE¼NW¼;
Secs. 21 and 22;
Sec. 23, NW¼ and S½;
Secs. 24 to 28, inclusive;
Secs. 32 to 36, inclusive.

The areas described aggregate 11,675.51 acres in Deschutes County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of national forest lands under lease, license, or permit, or governing the disposal of its mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be extended.

Dated: September 6, 1991.

Dave O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 91-23457 Filed 9-27-91; 8:45 am]
BILLING CODE 4310-33-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 0

Editorial Amendment of List of Office of Management and Budget Approved Information Collection Requirements

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action amends the Commission's list of Office of Management and Budget approved information collection requirements contained in the Commission's Rules.

This action is necessary to comply with the Paperwork Reduction Act, which requires that agencies display a current control number assigned by the Director of the Office of Management

and Budget for each agency information collection requirement.

This action will provide the public with a current list of information collection requirements in the Commission's Rules which have OMB approval.

EFFECTIVE DATE: September 30, 1991.

FOR FURTHER INFORMATION CONTACT: Judy Boley, Office of Managing Director, (202) 632–7513.

SUPPLEMENTARY INFORMATION:

Order

Adopted: September 23, 1991.
Released:

1. Section 3507(f) of the Paperwork Reduction Act of 1980, as amended, 44 U.S.C. 3507(f), requires agencies to display a current control number assigned by the Director of the Office of Management and Budget ("OMB") for each agency information collection requirement.

2. Section 0.408 of the Commission's Rules displays the OMB control numbers assigned to the Commission's information collection requirements. OMB control numbers assigned to Commission forms are not listed in this section since those numbers appear on the forms.

3. This Order § 0.408 to remove listings of information collections which the Commission has eliminated or to add listings of new information collections which OMB has approved.

4. Authority for this action is contained in section 4(i) of the Communications Act of 1934 (47 U.S.C. 154(i)), as amended, and § 0.231(d) of the Commission's Rules. Since this amendment is editorial in nature, the public notice, procedure, and effective date provisions of 5 U.S.C. 553 do not apply.

5. Accordingly, *It is ordered,* That § 0.408 of the rules is amended, effective on the date of publication in the **Federal Register.**

6. Persons having questions on this matter should contact Judy Boley at (202) 632–7513.

List of Subjects in 47 CFR Part 0

Reporting and recordkeeping requirements.

Federal Communications Commission.

Andrew S. Fishel,

Managing Director.

Part 0 of title 47 of the Code of Federal Regulations is amended as follows:

PART 0—COMMISSION ORGANIZATION

1. The authority citation for part 0 continues to read:

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

2. In 47 CFR 0.408, paragraph (b) is amended by removing the following rule sections and their corresponding control numbers:

§ 0.408 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) * * *

47 CFR part or section where identified and described	Current OMB control No.
* * * *	*
15.236	3060–0324
* * * *	*
22.501(l)(10)(ii)	3060–0094
* * * *	*
25.390	3060–0164
* * * *	*
43.21	3060–0395
43.22	3060–0395
* * * *	*
73.1840	3060–0183
* * * *	*
73.3524	3060–0423
* * * *	*
76.66	3060–0375
* * * *	*

3. In 47 CFR 0.408, paragraph (b) is further amended by adding the following rule sections and their corresponding OMB control numbers to read as follows:

§ 0.408 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) * * *

47 CFR part or section where identified and described	Current OMB control No.
* * * *	*
1.402	3060–0446
1.420	3060–0394
* * * *	*
15.31(a)	3060–0428
* * * *	*
15.214(c)	3060–0436
15.233	3060–0324
* * * *	*
22.501(j)(12)	3060–0094
22.505	3060–0453
22.506	3060–0453
* * * *	*
Part 25	3060–0383
25.300	3060–0164
* * * *	*
Part 41	3060–0165
* * * *	*
64.201	3060–0439
* * * *	*
68.200(k)	3060–0436
* * * *	*
73.932	3060–0207
* * * *	*
73.1620(g)	3060–0471
* * * *	*
73.3588	3060–0423
73.3589	3060–0452
* * * *	*
74.985	3060–0465
74.1251	3060–0473
74.1263	3060–0474
* * * *	*
74.1283	3060–0466
* * * *	*
80.361	3060–0435
* * * *	*
90.713	3060–0475
* * * *	*

[FR Doc. 91–23528 Filed 9–27–91; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 234

[FRA Docket No. RSCG–3; Notice No. 7]

RIN 2130—AA45

Grade Crossing Signal System Safety; Notice of Revised Effective Date

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of revised effective date.

SUMMARY: FRA is issuing a notice of the revised effective date of the final rule on grade crossing signal system safety published on July 23, 1991 (56 FR 33722). The new effective date is December 1, 1991, with the exception of requirements contained in 49 CFR 234.13 (which contains reporting requirements not yet approved by the Office of Management and Budget).

EFFECTIVE DATE: December 1, 1991.

FOR FURTHER INFORMATION CONTACT: Bruce F. George, Acting Chief, Highway-Rail Crossing and Trespasser Programs Division, Office of Safety, FRA, 400 Seventh Street, SW., Washington, DC 20590 (telephone 202–366–0533), or Mark Tessler, Trial Attorney, Office of Chief Counsel, FRA, 400 Seventh Street, SW., Washington, DC 20590 (telephone 202–366–0628).

SUPPLEMENTARY INFORMATION: On July 23, 1991, FRA published in the **Federal Register** (56 FR 33722) a final rule regarding Grade Crossing Signal System Safety. FRA stated that

[i]n accordance with the Paperwork Reduction Act of 1980, the recordkeeping and

reporting requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for approval. This rule will become effective on October 1, 1991 if the recordkeeping and reporting requirements have been approved by OMB; if not, a notice will be published in the **Federal Register**.

The Office of Management and Budget has approved the recordkeeping and reporting requirements contained in the final rule published on July 23, 1991 (49 CFR part 234), with the exception of those for FRA Form 6180.87, "Grade Crossing Signal System Information."

In order to provide sufficient lead time to enable the approved form to be distributed within the reporting community and to enable the reporting community to become familiar with the form, we are extending the effective date of the final rule to December 1, 1991.

The effective date of December 1, 1991 applies to the entire rule with the exception of 49 CFR 234.13. That section requires that each railroad file with FRA information regarding each active highway-rail grade crossing signal system on its system by April 1, 1992. FRA Form 6180.87, "Grade Crossing Signal System Information," is to be used for that purpose. Comments received by FRA regarding this information collection requirement indicated a need to modify the data elements and format of the form. FRA will, in the near future, resubmit for OMB review a revised Form 6180.87. A notice will be published in the **Federal Register** upon OMB approval.

Issued in Washington, DC on September 25, 1991.

Perry A. Rivkind,

Deputy Administrator.

[FR Doc. 91-23536 Filed 9-27-91; 8:45 am]

BILLING CODE 4910-06-M

49 CFR Part 245

[FRA Docket No. RSUF-1, Notice No. 3]

RIN 2130-AA62

Railroad User Fees; Interim Final Rule

AGENCY: Federal Railroad Administration (FRA); Department of Transportation (DOT).

ACTION: Interim final rule.

SUMMARY: FRA is today issuing an interim final rule establishing the railroad user fee program. The program adopted in the interim final rule will be applicable only to the fiscal year ending September 30, 1991 and will be based substantially on the proposal identified by FRA in the notice of proposed rulemaking.

The imposition of the railroad user fee program was mandated by section 10501 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. No. 101-508, 104 Stat. 1388). The purpose of the regulation is to implement the authorizing legislation by assessing the fees according to a formula that is based on a combination of system miles and traffic volume.

DATES: *Effective Date:* The interim final rule is effective on October 30, 1991.

FOR FURTHER INFORMATION CONTACT: Gail L. Payne, Senior Program Analyst, Industry Operations and Safety Analysis Division, Office of Policy, (RRP-12), FRA, Washington, DC 20590 (Telephone: 202-366-0384); or William R. Fashouer, Attorney-Advisor, Office of the Chief Counsel, (RCC-10) FRA, Washington, DC 20590 (Telephone: 202-366-0616).

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Background

Section 10501 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. No. 101-508, 104 Stat. 1388-399) (the "Reconciliation Act") amended the Federal Railroad Safety Act of 1970 (45 U.S.C. 421 *et seq.*) (the "Safety Act") by adding a new section 216 requiring the Secretary of Transportation to establish by regulation, after notice and comment, a schedule of fees to be assessed equitably to railroads, in reasonable relationship to an appropriate combination of criteria such as revenue ton-miles, track miles, passenger miles, or other relevant factors, but not based on the proportion of industry revenues attributable to a railroad or class of railroads. The fees to be collected are to be imposed on railroads subject to the Safety Act and are to be designed to cover the costs of administering the Safety Act, other than activities described in section 202(a)(2) thereof (45 U.S.C. 431(a)(2)). The Secretary's authority under the Safety Act, including the authority to implement new section 216, has been delegated to the Federal Railroad Administrator. (See 49 CFR 1.49(m)).

The Secretary is further directed in section 216 to assess and collect the applicable user fees with respect to each fiscal year before the end of the fiscal year. For the fiscal year ending September 30, 1991, the fees are to be assessed in an amount sufficient to cover the costs of administering the Safety Act beginning on March 1, 1991. Subsequent years will address the costs of administering the Safety Act for the entire year. The aggregate fees received for any fiscal year may not exceed 105 percent of the aggregate of appropriations made by the Congress for the fiscal year for activities covered by the fees.

The Secretary's authority to collect fees is to expire on September 30, 1995.

B. FRA's Notice of Proposed Rulemaking

FRA published a notice of proposed rulemaking ("NPRM") implementing the railroad user fee program in the **Federal Register** on May 7, 1991 (56 FR 21216). FRA proposed to base the collection of railroad user fees on two criteria: One criterion, train miles, was to be a measure of volume; and the second criterion, road miles, was to be a measure of system size. FRA proposed to apply the train miles and road miles user fee allocation formula across the board to all railroads, large or small, passenger or freight (with a minimum fee included to ensure that each railroad pays a share of the costs of the FRA safety and enforcement program).

FRA also discussed in the NPRM four of the principal issues it faced in implementing the user fee program. These included identifying those activities carried out by FRA under the Safety Act for which FRA is to be reimbursed through user fees, defining those entities to be responsible for paying user fees, deciding upon an appropriate formula upon which to allocate the user fees, and addressing FRA's need to complete the regulatory process in a timely fashion.

FRA held a public hearing on the NPRM on June 12, 1991. FRA received a significant body of comments from the public, including in excess of 80 written comments and more than 120 pages of hearing transcript.

II. Overview

FRA has carefully considered the comments it received on the NPRM. FRA appreciates the effort put forth by those who commented, especially considering the limited time in which the participants had to prepare comments. Following careful analysis, FRA has decided to proceed as follows in implementing the user fee program. FRA is issuing an interim final rule which will be applicable to the collection of user fees for fiscal year 1991 only. The interim final rule provides for the allocation of user fees on the basis of train miles and road miles as proposed in the NPRM (fifty percent on the basis of train miles and fifty percent on the basis of road miles) and retaining the $250.00 minimum fee but with the

inclusion of the sliding scale factor which was discussed in the preamble to the NPRM. The sliding scale makes an adjustment to the road miles calculation for light density railroads as follows:

Train miles per road mile	Scaling factor
up to 100	.10
101 to 200	.20
201 to 300	.30
301 to 400	.40
401 to 500	.50
501 to 600	.60
601 to 700	.70
701 to 800	.80
801 to 900	.90
901 and above	1.00

The scaling factor is multiplied by the assessment rate per road mile. The result is that light density railroads are subject to an adjusted assessment rate per road mile. The reduction in user fees to be collected that is caused by the scaling factor will be made up by reallocating such amount to all railroads either not subject to the scaling factor or the $250.00 minimum fee.

The interim final rule will apply to the same railroads identified by FRA in the NPRM, i.e., user fees will be paid by all railroads subject to FRA's regulatory program. The definition of railroad for the user fee program will continue to be the same as the definition used in Part 225—Railroad Accidents/Incidents: Reports, Classification, and Investigations. Railroad is defined to mean "all forms of non-highway ground transportation that run on rails or electro-magnetic guideways, including (1) commuter or other short-haul rail passenger service in a metropolitan or suburban area, as well as any commuter rail service which was operated by the Consolidated Rail Corporation as of January 1, 1979, and (2) high speed ground transportation systems that connect metropolitan areas, without regard to whether they use new technologies not associated with traditional railroads. Such term does not include rapid transit operations within an urban area that are not connected to the general railroad system of transportation." Again, as noted in the NPRM, the only railroads that will be excluded from the user fee regulations as a class are railroads whose entire operations are confined within an industrial installation. FRA has excluded these so called "plant railroads" generally from the railroad safety program. See 49 CFR part 209, appendix A.

Finally, the scope of the covered activities remains unchanged from the NPRM. FRA intends to include within the calculation of the cost of administering the Safety Act by FRA's Office of Safety pursuant to the Safety Act itself, and all regulations issued under the Safety Act, including regulations that have been or may be issued jointly under the Safety Act and one or more of the older safety statutes. FRA will not include within the user fee calculation the costs associated with administering those regulations not issued under the authority of the Safety Act or of administering statutes other than the Safety Act. These primarily involve regulations implementing the Noise Control Act, and the Hazardous Materials Transportation Act, and activities associated with implementing the Hours of Service Act, except for 49 CFR part 228.

FRA has made a number of minor technical changes in the interim final rule to clarify ambiguities identified by several of the comments.

III. Supplemental Rulemaking

FRA indicated in several sections of the NPRM that one of the principal challenges it faced in implementing the statutory mandate to collect user fees was completing the regulatory process in sufficient time to ensure that the user fees applicable to the fiscal year ending September 30, 1991 (FY 1991) were collected prior to September 30th. The very limited time available to FRA to initiate and complete the rulemaking process limited the range of criteria which could be used as a basis for assessing the user fees. Train miles and road miles are well recognized measures of railroad activity. In addition, these criteria have the benefit of already being the subject of a FRA reporting requirement for most railroads. By basing the user fees upon these two criteria, FRA imposed neither a significant new reporting burden on the industry nor required the industry to become familiar with a whole new measure of railroad activity.

A significant number of the comments on the NPRM recognized that FRA faced a serious problem in developing a user fee program and assessing and collecting user fees for FY 1991 before September 30th. With this in mind, several comments conceded that train miles and road miles could serve as the basis for allocating the user fee for FY 1991. For example, the Association of American Railroads ("AAR") indicated that it was not in a position to oppose or endorse the proposed user fee allocation formula because the severe time limits of the proceeding did not afford the AAR sufficient time in which to reach a consensus among AAR members. The AAR further stated that its members were willing to acquiesce in the proposed formula as an interim rule for the first year of the program. A number of comments requested FRA to reopen the proceeding early in FY 1992 and examine criteria that might be more appropriate factors upon which to allocate the user fees. After careful consideration, FRA has agreed that this is an appropriate course of action. Accordingly, we are issuing, herein, an interim final rule applicable to FY 1991 only. It is FRA's intention to reopen this proceeding early in FY 1992 with the express purpose of considering other user fee allocation criteria. We note that the selection of criteria other than train miles and road miles will in all likelihood entail new reporting requirements for a significant segment of the railroad industry. A number of the comments indicated that this would not pose a major obstacle to the adoption of revised criteria.

IV. Discussion of Comments

Comments were received from eighty-four groups or individuals on the NPRM, either through testimony at the public hearing or written consent. Testifying at the public hearing in Washington, DC on June 12, 1991 were representatives of the American Short Line Railroad Association ("ASLRA") (including representatives of several member railroads), the Association of American Railroads ("AAR"), the Regional Railroads of America ("RRA"), the National Railroad Passenger Corporation ("Amtrak"), and the Wisconsin Central Limited. Written comments were received from a wide spectrum of the railroad industry, from large and small railroads, commuter railroads, state regulatory agencies, and industry associations. In keeping with FRA's stated policy to consider late filed comments to the extent practicable, FRA has considered all comments submitted through August 1, 1991.

A. Allocation Formula

Most comments objected to the user fee allocation formula selected by FRA, either to the proposed criteria or to the weight given to each criterion, or both. A wide variety of alternative criteria were suggested including car miles, gross ton miles, employee service hours, and gross revenue ton miles, a system with a direct connection between FRA's safety enforcement activities for a given railroad and its fee, and a program that takes into account a carrier's operating and safety characteristics, among others. As noted above, FRA believes that there was insufficient time in FY 1991 to proceed on criteria other than

train miles and road miles, particularly since most of the suggested alternatives are not now the subject of reporting requirements for all or a significant portion of the rail industry. FRA will consider new criteria for fiscal years beginning after September 30, 1991 in a supplemental rulemaking but will use train miles and road miles for FY 1991.

In objecting to the weight to be accorded the two criteria in FY 1991, the ASLRA and a number of small and medium size railroads favored assigning additional weight to the train miles factor and a lesser reliance on the road miles factor. The smaller railroads indicated that a greater reliance on the train mile criterion would provide a stronger correlation between railroad activity and the allocation formula. FRA has given very careful consideration to this suggestion, but has decided to stay with the fifty-fifty allocation in the interim final rule. At present, FRA believes that an allocation based relatively equally on system size and system activity is the most appropriate way to allocate the user fee.

While FRA does not believe that the weight to be allocated to each criterion should be altered, FRA does recognize that the adopted formula should also include an adjustment for light density rail lines. FRA raised this concern in the NPRM and invited public comment on the implementation of a sliding scale system to reduce the impact on light density rail lines. The ASLRA strongly supported the use of a sliding scale (and suggested one that went even further than FRA's discussion proposal) as did a number of small and medium size railroads. The AAR strongly opposed the use of a sliding scale system stating that it would support FRA's use of train miles and road miles only if no changes were made to the proposed rule, including adoption of any sliding scale. With these conflicting comments in mind, FRA has decided to implement the sliding scale it proposed in the NPRM for FY 1991. FRA believes it is important that the allocation formula not be a deterrent to the acquisition and retention by small railroads of light density rail lines. The proposed sliding scale will help avoid this result. Adopting this sliding scale will shift an estimated $600,000 from light density railroads to the higher density railroads. At the same time, FRA believes that the more extensive sliding scale proposed by the ASLRA is not appropriate. A more extensive sliding scale is beyond that needed to protect marginal lines and FRA does not believe that any further shift in the user fee to the larger railroads and passenger and commuter lines could be justified.

In contrast with the comments received from small and medium size railroads regarding the appropriate weight to be given to the train mile component, several representatives of commuter railroads objected to the train mile component of the calculation. These commuter representatives commented that because of the nature of commuter operations, the train mile criterion will have a disproportionate impact on commuter operations because of the increasing number of trains being operated during peak periods. FRA does not believe that the allocation formula adopted for FY 1991 operates in a fashion that unduly burdens commuter operations.

The American Public Transit Association further argued that publicly-owned commuter railroads should be treated separately from freight and other passenger railroads in the imposition of user fees. In developing the NPRM, FRA gave some consideration to establishing separate criteria for freight and passenger railroads. FRA considered and rejected several options as being unworkable and ultimately discarded the entire concept because it could not identify a strong rationale supporting the need for separate criteria. FRA has decided, for the purposes of the interim final rule, to continue to calculate the user fee for all types of railroad operations on the basis of the same criteria. There simply isn't sufficient time in the current fiscal year to identify whether there is justification to establish separate criteria for freight and passenger carriers, and, if so, what might constitute an appropriate commuter share of the total user fee and develop criteria that would perhaps more fairly allocate that share among the commuter systems. FRA is prepared to consider a new approach for the next fiscal year. However, we must again note that different allocation formulas invariably rely on data that FRA does not now collect. As a result, new allocation formulas will necessarily entail imposition of new data collection and reporting requirements.

Several comments suggested that user fees were inappropriate and should be repealed. We disagree. The Administration has long supported rail safety user fees. The railroad user fee program has now been established by Congress and the FRA does not have the authority to adopt this recommendation.

B. Covered Railroads

Several comments suggested that an exemption should be granted for certain types of railroads. The ASLRA suggested that light density railroads (less than 151 train miles per miles of road) should be exempt; several small railroads suggested that small railroads should be exempt; and several commuter rail operators suggested that commuter operations should be exempt. As noted in the NPRM, FRA believes that all railroads which are covered by FRA's regulatory oversight should be subject to the user fee assessment program. FRA also believes that the user fee applicable to the smallest railroads should not be overly burdensome (including the minimum fee of $250.00 for FY 1991). In addition, because of the significant FRA oversight received by the passenger carriers, FRA could not justify an exemption of this industry segment from the user fee program, particularly since such an exemption would reallocate additional user fees to the freight segment. FRA recognizes that commuter operations are supported by state and local governments and that the additional costs associated with user fees may require additional subsidies or higher fares. Nonetheless, FRA is of the opinion that the issue of an exemption for commuter railroads is more appropriately a legislative issue.

FRA also received comments from the tourist railroad industry suggesting that FRA did not have jurisdiction over tourist railroads and that they should not be included within the railroad user fee program. As discussed above, the definition of the term "railroad" in the Safety Act (as amended by the Rail Safety Act of 1988) is an expansive one and clearly includes tourist railroads. Tourist railroads are subject to FRA's Accident/Incident regulations found at 49 CFR part 225 and thus are subject to the railroad user fee program which is founded on the same applicability provisions. FRA notes for the record that tourist railroads were also under FRA's jurisdiction prior to the enactment of the Rail Safety Act of 1988 and its amended definition of the term. The original accident reporting regulations, issued in 1974, included an expansive definition of "railroad" that specifically included "scenic" railroads. This was based on the intent of Congress in enacting the Federal Railroad Safety Act of 1970 to cover all railroads. While certain correspondence may have given a different impression of FRA's view, FRA believes it has had jurisdiction over tourist railroads since 1970, not just since 1988.

FRA also received comments from several tourist/museum railroads requesting FRA to establish a separate and reduced user fee category for these types of railroad operations. As noted in

the NPRM and in a related discussion on passenger operations in this document, because of the limited time frame available to FRA to complete this rulemaking, FRA has decided not to attempt to identify particular categories of rail operations and separate user fees for each category. FRA is of the opinion that such an effort would be very complicated and time consuming. It is an issue that FRA is willing to reconsider as part of the supplemental rulemaking but cannot adopt for FY 1991.

C. Covered Activities

FRA received only limited comment on the issue of what FRA activities should be reimbursed from user fees. The AAR commented that FRA should exclude from the user fee program those costs associated with the older safety laws and that FRA would be acting beyond the scope of its statutory authority if it proceeds as proposed. FRA indicated in the NPRM that it intended to include within the calculation of the cost of administering the Safety Act all activities carried out pursuant to the Safety Act itself, and all regulations issued under the Safety Act, including regulations that have been or may at some future time be issued jointly under the Safety Act and one or more of the older safety statutes. FRA is of the opinion that it is entirely within the Congressional intent to include within the user fee calculation all regulations issued by FRA under the authority of the Safety Act, notwithstanding the fact that the regulations may have more than one statutory basis. Clearly, regulations that are not based on the Safety Act will not be included in the calculation of FRA's costs to be reimbursed through user fees.

From a slightly different perspective, the American Trucking Association suggested three additional items of expense that it believed should be included in the user fee program: those safety costs incurred by the Office of the Administrator not included with the general rail safety expenses; FRA's costs of administering safety activities under the Hazardous Material Transportation Act ("HMTA"); and grants to states to cover 50 percent of the costs of railroad safety inspections should such grants be reinstituted. FRA remains of the opinion that these three categories of cost items were properly excluded in the NPRM. We believe that the Congressional intent was focused entirely on the safety activities of FRA's Office of Safety. The accounting and other difficulties associated with separating out those activities of the Office of the Administrator that relate to rail safety would require an effort greater than the corresponding benefit. In terms of the Hazardous Material Transportation Act, the regulations implementing that statute have been issued under that Act by the Research and Special Programs Administration and are enforced by FRA separate and apart from the Safety Act. Since the HMTA regulations do not at this time have a direct connection to the Safety Act, FRA believes it would be inappropriate to include HMTA associated costs in the total of costs to be reimbursed through user fees. The Administration is seeking authority to collect user fees for activities covered under the HMTA. Finally, on the issue of grants to states for railroad safety activities, FRA is of the opinion that this issue is not a relevant one for FY 1991 since no funding was appropriated by Congress for this program.

Several states suggested that the costs incurred by the individual states which employ railroad safety inspectors ought to be included within the user fee collection program and that the user fees collected in relation to state rail activity should be returned to the states to help fund these programs. FRA has carefully evaluated the Congressional intent on this issue since the suggestion was made by several states which work closely with the FRA on rail safety issues. FRA has determined that the statutory authority provided by Congress in section 216 does not authorize the agency to include state costs within the collection program or to turn over to the states some of the funds collected. The language employed by Congress in section 216 clearly suggests that only Federal safety activities are to be included. The fact that the provision was adopted as part of a Federal deficit reduction package reinforces this conclusion. All fees must be deposited into the general fund of the United States Treasury as offsetting receipts and the aggregate of fees received in any fiscal year may not exceed 105 percent of the aggregate appropriations for the year to be funded by such fees.

Finally, the user fee impact report required by Congress in section 216(e) focuses only on the "total cost of Federal safety activities . . . defrayed by Federal user fees," and "any significant difference in the burden of Federal user fees borne by the railroad industry." 45 U.S.C. 447(e). For all of these reasons, FRA must conclude that Congress intended to limit the activities covered by user fees to Federal railroad safety activities. Certainly, this conclusion is not intended in any way to lessen the importance of the efforts undertaken by the States in working for improved rail safety.

The AAR commented that the NPRM was deficient in that it did not contain proposed procedures for the publication of: (1) An accounting of the revenues to be obtained from each railroad by the fee system, and (2) a detailed statement of FRA's expenditures in administering the Safety Act. On the issue of publishing the fee collected from each railroad, FRA believes that such information would be available to interested parties under the normal procedures established under the Freedom of Information Act. On the issue of providing a detailed statement of FRA's expenditures in administering the Safety Act, FRA indicated in the NPRM (§ 245.201 (a) and (b)) that FRA would annually calculate total train miles, total road miles, the total cost of administering the Safety Act, the railroad user fee rate per train mile and a railroad user fee rate per road mile and publish a summary of its calculations in the **Federal Register**. This provision has been retained in the interim final rule. FRA agrees that it is important for the railroad industry to understand the basis for FRA's calculations, including an appropriate statement identifying the total cost to be reimbursed from user fees.

D. Miscellaneous Comments

1. Reporting Issues

FRA received several comments suggesting the need for FRA to clarify provisions on the reporting requirements. Amtrak suggested that there may be some ambiguity with respect to responsibility for reporting levels of train operations conducted for the benefit of various entities. FRA recognizes that there are a great variety of operational relationships in the railroad industry and has sought to establish a system for user fee collection that simplifies the process and that relies on existing reporting requirements to the extent possible. Unfortunately, under the procedure adopted in this proceeding, some railroads may be assessed user fees on the basis of train operations they provide for other entities. Railroads in such situations will have to obtain reimbursement as appropriate from the entities for which they provide service. The parties involved are the most knowledgeable and thus the best able to sort out these relationships and assign ultimate financial responsibility. It would be virtually impossible for FRA to establish hard and fast rules allocating the user

fee so that the ultimate beneficiaries of the rail service paid the user fee in all instances.

FRA received several comments on the subject of yard-switching miles and work miles as a component of the train miles criterion. For the user fee program, train miles serve as the volume criterion and include yard switching and work train miles. The instructions for calculating train miles under the user fee program are the same as those used for reporting train miles under 49 CFR part 225 which in turn is based on the Uniform System of Accounts for Railroad Companies prescribed by the Interstate Commerce Commission in 49 CFR part 1200. Under these procedures, yard switching locomotive miles and work train miles are to be included in train miles reported. Yard switching locomotive miles are computed at the rate of 6 mph for the time actually engaged in yard switching service if actual mileage is unknown.

V. Section-by-Section Analysis

Section 245.1 describes the purpose and scope of the user fee regulations. The only change which has been made to the NPRM is to indicate that the railroad user fee procedures adopted in the interim final rule apply only to FY 1991.

Section 245.3 defines the applicability of these regulations. As noted above, the rule applies to all railroads except those railroads whose entire operations are confined within an industrial installation. The term "railroad" is otherwise intended to have the full breadth encompassed in the statutory definition found in section 202(e) of the Safety Act (45 U.S.C. 431(e)). This section remains unchanged from the NPRM.

Section 245.5 includes a series of definitions of important terms employed in the user fee regulation. FRA has added definitions for two additional terms (light density railroad and sliding scale) and refined the definition of several terms originally included in the NPRM.

Section 245.7 identifies the penalties FRA may impose upon any individual or entity that violates any requirement of this part. FRA received no comments on the penalty provisions and they remain unchanged from the NPRM.

Section 245.101 establishes the railroad user fee reporting requirements. Since the provisions of the interim final rule will apply to FY 1991 only, revisions have been made to § 245.101 (a) and (b) to limit application of these sections to FY 1991 only. FRA has also added some additional clarification to subsections (c) and (d) to eliminate any confusion associated with calculating train miles and road miles. Provisions included in § 245.101 of the NPRM were designed to clarify which entity is responsible for reporting train miles and road miles to the FRA when several railroads have an interest in a particular track or facility. FRA continues to follow the basic principle that each railroad subject to this part is to report its own train miles for the freight and passenger services it operates without regard to track or facility ownership. As a result, Amtrak and the commuter railroads that own track and operate their own equipment with their own employees would report their own train miles even if the services operated over track owned by one of the freight railroads (or commuter operations over track owned by Amtrak). Since Amtrak owns track primarily in the Northeast Corridor, its share of the user fee will be calculated on both a train mile and road mile basis for its Northeast Corridor operations and solely on a train mile basis for the bulk of its off-corridor operations.

Provisions are also included in § 245.101 of the NPRM to clarify which entity is responsible for reporting road miles. Road miles to be reported shall include all track owned, operated, or controlled by the railroad but not track used under trackage rights agreements. Where trackage rights agreements are in effect, the owning railroad is to report the road miles while all railroads operating over the track in question would report their own train miles. FRA has retained the concept that road miles for leased track shall be reported by the lessee railroad. The AAR questioned FRA's intent in situations governed by a haulage agreement. The FRA continues to believe that where Railroad B operates a regularly scheduled train for Railroad A over road under the operational control of Railroad B, then Railroad B would report and be assessed the user fee on both the train miles and the road miles.

Section 245.103 requires each railroad subject to this part to maintain adequate records supporting the information submitted to FRA regarding the railroad's train miles and road miles calculations. No comments were received on this section and the interim final rule remains unchanged from the NPRM.

Section 245.105 establishes a three year holding period for records required to be maintained under § 245.103. No comments were received on this section and the interim final rule remains unchanged from the NPRM.

Section 245.201 describes the method FRA has selected for calculating the user fee to be paid by each railroad subject to these regulations. Two important changes have been included in the interim final rule. First, this section has been revised to reflect FRA's decision to limit the applicability of the interim final rule to FY 1991 only. Second, the sliding scale adjustment factor in the road miles calculation has been included. As discussed above, the assessment rate per road mile will be adjusted for certain light density railroads. The process would work as follows: a scaling factor identified in the interim final rule will be multiplied by the assessment rate per mile of road for railroads with less than 900 train miles per mile of road. The adjustment will vary with traffic density such that railroads with the lowest density would benefit from the greatest adjustment. As examples, FRA noted in the NPRM that a railroad that had a density of 150 train miles per miles of road would be subject to a scaling factor of .20 resulting in an adjusted assessment rate per mile of road that is 20 percent of the rate in the standard schedule. A railroad with a density of 850 train miles per mile of road would be subject to a scaling factor of .90 and would pay 90 percent of the standard assessment rate per mile of road. FRA will include the scaling factor in calculating the user fee to be paid by each railroad and the bill received by the railroad with the Final Assessment Notice will reflect the application of the sliding scale, if appropriate. The reduction in user fees assessed caused by the scaling factor will be made up by reallocating such amount to all railroads not subject either to the scaling factor or the $250.00 minimum fee. The rest of the calculation of the user fee remains unchanged from the NPRM. As a result, the fee will continue to be based on the sum of: (i) The railroad's train miles times the assessment rate per train mile and (ii) the railroad's road miles times the applicable assessment rate per road mile. Due to the sliding scale, there will be a modified assessment rate per road mile for each light density railroad and a general assessment rate applicable to all other railroads. In no case will the fee be less than $250.00. The prescribed minimum fee will be assessed when the calculation of an individual railroad's fee results in an amount which is less than the defined minimum fee. The additional amount that is collected as a result of the assessment of the minimum fee for such railroads will not cause an offset to the amount of user fees that will be assessed to the non-light density railroads. The additional amount collected as a result of imposing a minimum fee will be added to the total user fee receipts.

Section 245.301 outlines the procedures that will be employed by FRA in collecting the user fees. The sole change to this section in the interim final rule is to limit the applicability of the section to FY 1991 only.

Section 245.303 indicates that each railroad subject to this part has an obligation to pay to FRA an annual railroad user fee. Payment of the fiscal year 1991 fee will be due not later than November 30, 1991. No comments were received on this section and it remains essentially unchanged from the NPRM.

VI. Regulatory Impact

A. E.O. 12291 and DOT Regulatory Policies and Procedures

These regulations have been evaluated in accordance with existing regulatory policies and are considered to be non-major under Executive Order 12291. No comments were received on this determination and no change is deemed warranted for the interim final rule.

The regulations are considered to be significant under section 5(a)(2)(f) of DOT's Regulatory Policies and Procedures ("the Procedures") (44 FR 11034; February 26, 1979) because they implement a substantial regulatory program or change in policy. In accordance with section 10(a) of the Procedures, FRA determined that a draft Regulatory Impact Analysis was not required because the proposed regulations did not meet any of the criteria mandating the preparation of such an analysis. As a result, in accordance with section 10(e), FRA prepared a draft Regulatory Evaluation which included a brief analysis of the economic consequences of the proposed regulation and an analysis of its anticipated benefits and impacts. FRA received only one comment suggesting the need for a Regulatory Analysis. The American Public Transit Association suggested that prior to implementing any user fee schedule applicable to commuter railroads, FRA should conduct a Regulatory Analysis to determine the impact of the proposal on commuter rail passengers and on State and local governments who are responsible, through commuter rail operations, for the provision of commuter rail service in an increasing number of urban and suburban areas throughout the country FRA has carefully considered this comment but believes that the issue of whether commuter railroads are subject to the railroad user fee program is a legislative rather than a regulatory one. Congress specifically provided in the authorizing legislation that user fees are to be paid by railroads subject to the Federal Railroad Safety Act of 1970. FRA must presume that Congress was aware that the term "railroads" encompassed commuter railroads. Since Congress did not provide a specific statutory exemption, FRA does not believe it has the authority to exempt commuter railroads as a class from the user fee program. This conclusion is reinforced by the recognition that the statute directs FRA to collect a specific amount of user fees each year and that to the extent user fees are not collected from a particular segment of the railroad industry, other segments must bear a larger share. With these considerations in mind, FRA believes that little purpose would be served by the preparation of a formal Regulatory Impact Analysis, particularly in light of the very limited time frame governing the completion of the regulatory process for FY 1991. Recognizing that different criteria affect the commuter railroads (and most other railroads for that matter), FRA does not believe that the differences are significant enough to rise to the level of a major impact.

FRA also received a number of comments on the regulatory evaluation. FRA has carefully considered these and has made a number of changes to the regulatory evaluation.

Regulatory Evaluation

Prepared in Accordance With Section 10(e) of the Department of Transportation's Regulatory Policies and Procedures (44 FR 11034; February 26, 1979)

The imposition of the railroad user fee program was mandated by section 10501 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. No. 101–508, 104 Stat. 1388). The purpose of the regulation is to implement the authorizing legislation by assessing the fees according to a formula that is based on a combination of system miles and traffic volume.

The economic consequence of the regulation is to shift the financing of the Federal Railroad Administration's railroad safety program to the railroad industry which directly benefits from uniform, nationwide safety standards. Rail industry financing will directly offset the public funding through general revenues, which had previously supported the costs of the FRA safety program. The cost of the rail industry in fiscal year 1991 will be approximately $20 million and approximately $40 million each year in fiscal years 1992 through 1995. In the first year, these costs represent less than one-tenth of one percent of Class I railroad revenues, which were $27 billion in 1989. It is estimated that revenues for the entire rail industry in 1989 were about $32 billion. On a net income basis of $2.2 billion in 1989, user fees during the first year represent less than 1 percent of Class I earning before consideration of any tax offsets or pass throughs to shippers and 2 percent in the out years (1992–1995). In addition to the user fees, there will be a minor cost burden on the industry associated with necessary record keeping and the actual payment of the user fees. However, since the user fees are based on criteria that are well known and already reported to the FRA, any additional burden should be minimal.

Each individual railroad's user fee assessment is based on two criteria: system size and volume of traffic. The largest railroads will pay the greatest amount in user fees and the smallest railroads will pay lesser amounts.

The impact on consumers will be minimal. In theory, the railroads could pass along the user fees to their customers as increased rates. However, since the fees are only .12 percent of total estimated revenues, the impact would be minimal. It is likely that competitive factors will prevent the railroads from passing on the full cost of the fees. To the extent the fees may result in slightly higher freight charges, these charges represent a shift of the cost burden from the general public to those who use rail transportation and benefit by increased safety on the railroads. Since the regulations apply only to railroads, there will be no impact on State and local governments other than on those state and local governments that operate railroads or financially support rail operations. The impacts on state and local governments having commuter service are considered minimal. Excluding Amtrak, rail passenger service represents about 3.5 percent of total user fees collected, or about $700,000 in fiscal year 1991.

Since the railroad user fee program was statutorily mandated by Congress in the Reconciliation Act, FRA is of the opinion that the principal weighing of costs and benefits has been undertaken by the Congress in deciding to adopt the legislation. The statute specifically mandates that the user fees are to be assessed to railroads subject to the Federal Railroad Safety Act of 1970 and are to be collected in an amount sufficient to cover the costs incurred by FRA in administering the Safety Act (excluding certain training and research and development costs). As a result, FRA has little discretion in the regulatory process to make adjustments

in the scope of the covered entities or in the amount of money to be collected. The use assessment criteria that are for the most part based on data kept by the railroads and submitted for other reporting requirements (most notably 49 CFR parts 225 and 233) will minimize the additional costs associated with the administrative costs of implementing the user fee program.

B. Regulatory Flexibility Act

FRA certifies that this rule will not have a significant economic impact on a substantial number of small entities. The rule will apply only to railroads, and accordingly will have no direct impact on small units of government, or other businesses or organizations. Although a substantial number of small railroads would be subject to these regulations, the smallest of these carriers will only be subject to the minimum fee for FY 1991 of $250.00 which FRA does not believe to be burdensome. FRA is of the opinion that the economic impact of the proposed rule should not be significant.

The regulations herein will not have substantial effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Thus, in accordance with Executive Order 12612, preparation of a Federalism Assessment is not warranted. As discussed above, the regulations will apply to commuter rail operators and will have an impact only on state and local governments which operate or support this type of rail operations. However, the impact of the interim final rule is not felt by the states in their capacity as states but in their capacity as operators or supporters of railroad operations. As such, they benefit from the FRA safety and enforcement program and come within the ambit of those entities which Congress determined should pay to support the cost of that program.

C. Paperwork Reduction Act

The rule contains information collection requirements. FRA has submitted these information collection requirements to the Office of Management and Budget for approval in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). FRA has endeavored to keep the burden associated with this rule as simple and minimal as possible. The sections that contain information collection requirements and the estimated time to fulfill each requirement are as follows:

Section	Brief description	Est. average time
245.101	Annual report of railroads subject to user fees.	1 to 8 hours depending on size of railroad.
245.101	Revised annual report.	45 minutes.
245.103	Recordkeeping	5 minutes.

All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information. The Office of Management and Budget has approved these information collection requirements and has assigned them OMB approval number 2130-0532.

D. Environmental Impact

FRA has evaluated these regulations in accordance with its procedures for ensuring full consideration of the environmental impacts of FRA actions as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, executive orders, and DOT Order 5610.1c. These regulations meet the criteria that establish this as a non-major action for environmental purposes.

List of Subjects in 49 CFR Part 245

Railroad user fee, Reporting and recordkeeping requirements.

Interim Final Rule

In consideration of the foregoing, chapter II, subtitle B, of title 49, Code of Federal Regulations is amended by adding a new part 245 as follows:

PART 245—RAILROAD USER FEES

Subpart A—General

Sec.

Subpart B—Reporting and Recordkeeping

Subpart C—User Fee Calculation

Subpart D—Collection Procedures and Duty to Pay

Authority: 45 U.S.C. 431, 437, 438, 446 as amended; Pub. L. 101-508, 104 Stat. 1388; and 49 CFR 1.49(m)

Subpart A—General

§ 245.1 Purpose and scope.

(a) The purpose of this part is to implement section 216 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 446) (the "Safety Act") (as added by section 10501 of the Omnibus Budget Reconciliation Act of 1990, Pub. L. No. 101-508, 104 Stat. 1388-399) which requires the Secretary of Transportation to establish a schedule of fees to be assessed equitably to railroads to cover the costs incurred by the Federal Railroad Administration ("FRA") in administering the Safety Act (not including activities described in section 202(a)(2) thereof).

(b) Beginning in the fiscal year ending September 30, 1991, each railroad subject to this part shall pay an annual user fee to the FRA. For the fiscal year ending September 30, 1991, the user fee shall be calculated by the FRA in accordance with § 245.101. The Secretary's authority to collect user fees shall expire on September 30, 1995, as provided for in section 216(f) of the Safety Act.

§ 245.3 Application.

This part applies to all railroads except those railroads whose entire operations are confined within an industrial installation.

§ 245.5 Definitions.

As used in this part—

(a) *FRA* means the Federal Railroad Administration.

(b) *Light density railroad* means railroads with less than 900 train-miles per road mile.

(c) *Main track* means a track, other than an auxiliary track, extending through yards or between stations, upon which trains are operated by timetable or train order or both, or the use of which is governed by a signal system.

(d) *Passenger service* means both intercity rail passenger service and commuter rail passenger service.

(e) *Railroad* means all forms of non-highway ground transportation that run on rails or electro-magnetic guideways, including

(1) commuter or other short-haul rail passenger service in a metropolitan or surburban area, as well as any commuter rail service which was operated by the Consolidated Rail Corporation as of January 1, 1979, and

(2) high speed ground transportation systems that connect metropolitan areas, without regard to whether they use new technologies not associated with traditional railroads.

Such term does not include rapid transit operations within an urban area that are not connected to the general railroad system of transportation.

(f) *Road miles* means the length in miles of the single or first main track, measured by the distance between terminals or stations, or both. Road miles does not include industrial and yard tracks, sidings, and all other tracks not regularly used by road trains operated in such specific service, and lines operated under a trackage rights agreement.

(g) *Safety Act* means the Federal Railroad Safety Act of 1970 (45 U.S.C. 421 *et seq.*)

(h) *Sliding Scale* means the adjustment made to the mile of road of light density railroads. The sliding scale is as follows:

Train miles per road mile	Scaling factor
up to 100	0.10
101 to 200	0.20
201 to 300	0.30
301 to 400	0.40
401 to 500	0.50
501 to 600	0.60
601 to 700	0.70
701 to 800	0.80
801 to 900	0.90
901 and above	1.00

The scaling factor is multiplied by the road miles by each railroad for the year.

(i) *Trackage rights agreement* means an agreement through which a railroad obtains access and provides service over tracks owned by another railroad where the owning railroad retains the responsibility for operating and maintaining the tracks.

(j) *Train* means a unit of equipment, or a combination of units of equipment (including light locomotives) in condition for movement over tracks by self-contained motor equipment.

(k) *Train mile* means the movement of a train a distance of one mile measured by the distance between terminals and/or stations.

Note: Yard switching locomotive miles and work train miles are to be included in train mile reporting. Yard switching locomotive miles are computed at the rate of 6 mph for the time actually engaged in yard switching service if actual mileage is unknown.

§ 245.7 Penalties.

Any person (including a railroad and any manager, supervisor, official, or other employee or agent of a railroad) who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of at least $250 and not more than $10,000 per violation. Civil penalties may be assessed against individuals only for willful violations. Each day a violation continues shall constitute a separate offense. A person may also be subject to the criminal penalties provided for in 45 U.S.C. 438(e) for knowingly and willfully falsifying records or reports required by this part.

Subpart B—Reporting and Recordkeeping

§ 245.101 Reporting requirements.

(a) Each railroad subject to this part shall submit to FRA, not later than October 7, 1991 a report identifying the railroad's total train miles for the calendar year 1990 and the total road miles owned, leased, or controlled (but not including trackage rights) by the railroad as of December 31, 1990. This report shall be made on FRA Form 6180.89—Annual Report of Railroads Subject to User Fees. The report shall include an explanation for an entry of zero for either train miles or road miles. Each railroad shall also identify all subsidiary railroads and provide a breakdown of train miles and road miles for each subsidiary. Finally, each railroad shall enter its corporate billing address for the user fees, and the name, title, telephone number, date, and a notarized signature of the person submitting the form to FRA.

(b) FRA mailed blank copies of FRA Form 6180.89—Annual Report of Railroads Subject to User Fees to each railroad of record during the month of May, 1991 for the railroad's use in preparing the report. This action by FRA is for the convenience of the railroads only and in no way affects the obligation of railroads subject to this part to obtain and submit FRA Form 6180.89 to FRA in a timely fashion in the event a blank form is not received from FRA. Blank copies of FRA Form 6180.89 may be obtained from the Office of Safety, FRA, 400 Seventh Street, SW., Washington, DC 20590.

(c) Train miles shall be calculated by the railroad in accordance with the following considerations:

(1) Each railroad subject to this part is to report the train miles for the freight and passenger service it operates without regard to track or facility ownership.

(2) Train miles are to be reported by both freight and passenger railroads and shall include miles run between terminals or stations, or both, miles run by trains consisting of empty freight cars or without cars, locomotive train miles run, miles run by trains consisting of deadhead passenger equipment, motor train miles run, and yard-switching miles run.

(d) Road miles shall be calculated by the railroad in accordance with the following considerations:

(1) Road miles to be reported shall include all track owned, operated, or controlled by the railroad but shall not include track used under trackage rights agreements. Road miles consisting of leased track shall be reported by the lessee railroad.

(2) Road miles to be reported shall not include industrial and yard tracks, sidings, and other tracks not regularly used by road trains operated in such specific service.

(e) In computing both train miles and road miles, fractions representing less than one-half mile shall be disregarded and other fractions considered as one mile.

(f) Each railroad subject to this part has a continuing obligation to assure that the information provided to FRA on Form 6180.89 is accurate. Should a railroad learn at a later date that the information provided was not correct, it shall submit a revised Form 6180.89 along with a detailed letter explaining the discrepancy.

(g) The information collection and reporting requirements contained in this part have been referred to the Office of Management and Budget for approval in accordance with the provision of the Paperwork Reduction Act of 1980. The Office of Management and Budget has approved the information collection and reporting requirements and assigned them OMB approval number 2130-0532.

§ 245.103 Recordkeeping.

Each railroad subject to this part shall maintain adequate records supporting its calculation of the railroad's total train miles for the prior calendar year and the total road miles operated by the railroad as of December 31 of the previous calendar year. Such records shall be sufficient to enable the FRA to verify the information provided by the railroad on FRA Form 6180.89—Annual Report of Railroads Subject to User Fees. Such records also be available for inspection and copying by the Administrator or the Administrator's designee during normal business hours.

§ 245.105 Retention of records.

Each railroad subject to this part shall retain records required by § 245.103 for at least three years after the end of the calendar year to which they relate.

Subpart C—User Fee Calculation

§ 245.201 User fee calculation.

(a) The fee to be paid by each railroad shall be determined as follows:

(1) After August 15, 1991, FRA will tabulate the total train miles and total road miles for railroads subject to this part for calendar year 1990. FRA's calculations will be based on the information supplied by covered railroads under section 245.101 hereof, and other reports and submissions which railroads are required to make to FRA under applicable regulations. At the same time, FRA will calculate the total cost of administering the Safety Act for the period between March 1, 1991 and September 30, 1991 (other than activities described in section 202(a)(2) thereof) which will represent the total amount of user fees to be collected.

(2) Using tabulations of total train miles, total road miles, and the total cost of administering the Safety Act, FRA will calculate a railroad's user fee assessment as follows:

(i) The assessment rate per train mile will be calculated by multiplying the total costs of administering the Safety Act by 0.5 and then dividing this amount (i.e., fifty percent of the total amount to be collected) by the total number of train miles reported to the FRA for calendar year 1990. The result will be the railroad user fee assessment rate per train mile for fiscal year 1991.

(ii) The assessment rate per road mile will be calculated in three steps. First, FRA will determine a preliminary assessment rate per road mile by multiplying the total costs of administering the Safety Act by 0.5 and dividing this amount (i.e., fifty percent of the total amount to be collected) by the total road miles reported to FRA for calendar year 1990. Second, FRA will adjust this preliminary rate per road mile for each light density railroad by multiplying the preliminary rate by the appropriate scaling factor identified in § 245.5(h). The result will be a reduced assessment rate per road mile for light density railroads. Third, FRA will adjust the prelminary assessment rate per road mile for all railroads except light density railroads and those for whom the minimum fee applies by adding to their preliminary rate an incremental amount reflecting the reallocation of the relief provided to light density railroads under step 2 using the sliding scale. The incremental amount is calculated by subtracting

(A) the total amount to be collected from light density railroads after application of the sliding scale from

(B) the total amount that would have been collected from light density using the preliminary assessment rate and developed under step 1 and

(C) dividing the resulting amount by the total road miles reported to FRA by all railroads except light density railroads and those paying the minium fee.

The incremental amount is then added to the preliminary assessment rate for all railroads except light density railroads to derive the assessment rate per road mile for all railroads except light density railroads and those paying the minimum fee. The results will be modified assessment rate per road mile for light density railroads qualifying under step 2 and a general assessment rate applicable to all other railroads (except those railroads assessed the minimum fee).

(iii) In those cases where the computed fee is less than the defined minimum, the net increase attributable to the application of the minimum standard is not included in the reallocation process under step 3 and is instead added to total collections.

(b) FRA will publish a summary of its calculations in the **Federal Register.**

(c) The user fee to be paid by each covered railroad is the greater of $250.00 or the sum of the railroad's train miles times the assessment rate per train mile and the railroad's road miles times the applicable asessment rate per road mile.

Subpart D—Collection Procedures and Duty to Pay

§ 245.301 Collection procedures.

(a) After August 15, 1991, FRA will provide to each covered railroad a notice (the "Preliminary Assessment Notice") containing FRA's preliminary estimates of the total user fee to be collected, the assessment rate per train mile, the assessment rate per road mile, the train miles and road miles for the railroad for the prior calendar year, and the user fee to be paid by the railroad. The Preliminary Assessment Notice is designed to be purely informational and will enable covered railroads to make necessary plans and budget adjustments in preparation of receipt of the final notice and user fee assessment. The Preliminary Assessment Notice is not a bill and no payment is due to FRA on the basis of the Preliminary Assessment Notice.

(b) FRA will refine its calculations as necessary and will provide to each covered railroad a notice (the "Final Assessment Notice") containing FRA's final calculations of the total user fee to be collected, the assessment rate per train mile, the assessment rate per road mile (as adjusted by the sliding scale), the train miles and road miles for the railroad for the prior calendar year, the user fee to be paid by the railroad, and a payment voucher. For the fiscal year ending September 30, 1991, the Final Assessment Notice will be provided on or about September 26, 1991.

§ 245.303 Duty to pay.

(a) Beginning in the fiscal year ending September 30, 1991, each railroad subject to this part shall pay an annual railroad user fee to the FRA. Each railroad shall make its fiscal year 1991 payment in full to FRA no later than November 30, 1991. Payment is made only when received by FRA. Each railroad shall pay by certified check or money order payable to the Federal Railroad Administration. The payment shall be identified as the railroad's user fee by marking it with the railroad's User Fee Account Number as assigned by FRA and by returning the payment voucher form received with the Final Assessment Notice. Payment shall be sent to the address stated in the assessment notice.

(b) Payments not received by the due date will be subject to allowable interest charges, penalties, and administrative charges (31 U.S.C. 3717). Follow-up demands for payment and other actions intended to assure timely collection, including referral to local collection agencies or court action, will be conducted in accordance with Federal Claims Collection Standards (4 CFR chapter II) and Departmental procedures.

Issued in Washington, DC, on September 26, 1991.

Perry A. Rivkind,

Deputy Federal Railroad Administrator.

[FR Doc. 91-23576 Filed 9-27-91; 8:45 am]

BILLING CODE 4910-06-M

National Highway Traffic Safety Administration

49 CFR Parts 571 and 574

Federal Motor Vehicle Safety Standards; Tire Identification and Recordkeeping

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule; technical amendments.

SUMMARY: This agency has discovered some errors in the most recent edition of title 49 of the Code of Federal Regulations. This notice corrects those errors, so that the replacement for this edition of the Code of Federal Regulations will be accurate. No new obligations or duties are imposed on any party as a result of these corrections, since the corrections merely remove obsolete provisions from the standard.

EFFECTIVE DATE: September 30, 1991.

FOR FURTHER INFORMATION CONTACT: Stephen Kratzke, Office of Chief Counsel, NHTSA, 400 Seventh Street SW., Washington, DC 20590. Mr. Kratzke can be reached by telephone at (202) 366–2992.

SUPPLEMENTARY INFORMATION: NHTSA has discovered some very minor errors in the most recent edition of title 49 of the Code of Federal Regulations. This rule corrects those errors so that the October 1991 revision will now show them.

First, Standard No. 116, *Motor Vehicle Brake Fluids* (49 CFR 571.116), includes a reference in S7.3 to 26 CFR part 212. That part was moved from title 26 to title 27 in 1975; 40 FR 16835, April 15, 1975. S7.3 of Standard No. 116 will now refer to 27 CFR 21.35. Second, Standard No. 121, *Air Brake Systems* (49 CFR 571.121), shows Figure 3 ahead of Figure 2 in the text of the standard. This rule moves all the figures in Standard No. 121 to follow the text and sets the figures out in numerical order. Third, two sections in part 574, Tire Identification and Recordkeeping, divide subparagraphs incorrectly, using (A), (B), etc. when they ought to be (i), (ii), etc. This rule also updates the authority citation in part 574.

These amendments impose no duties or responsibilities on any party, nor do they alter any existing obligations. Instead, these amendments will simply ensure that the public will have a correct copy of Standard No. 208 in title 49 of the Code of Federal Regulations. Accordingly, NHTSA finds for good cause that notice and opportunity for comment on this amendment are unnecessary, and this amendment is effective as soon as this notice is published.

List of Subjects

49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

49 CFR Part 574

Labeling, Motor vehicle safety, Motor vehicles, Reporting requirements, Rubber and rubber products, Tires.

In consideration of the foregoing, title 49 of the Code of Federal Regulations is amended as follows:

PART 571—[AMENDED]

1. The authority citation for part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.116 [Amended]

2. S7.3 of Standard No. 116 is revised to read as follows:

S7.3 *Ethanol.* 95 percent (190 proof) ethyl alcohol, USP or ACS, or Formula 3–A Specially Denatured Alcohol of the same concentration (as specified at 27 CFR 21.35). For pretest washings of equipment, use approximately 90 percent ethyl alcohol, obtained by adding 5 parts of distilled water to 95 parts of ethanol.

* * * * *

§ 571.121 [Amended]

3. Standard No. 121 is amended by moving Figures 1, 1(a), 2, and 3 from their present positions within the regulatory text of the standard so that the Figures appear following all of the regulatory text and in numerical order.

PART 574—[AMENDED]

4. The authority citation for Part 574 is revised to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407, 1411–1420, 1421; delegation of authority at 49 CFR 1.50.

5. Section 574.7(a) is revised to read as follows:

§ 574.7 Information requirements—new tire manufacturers, new tire brand name owners.

(a)(1) Each new tire manufacturer and each new tire brand name owner (hereinafter referred to in this section and § 574.8 as "tire manufacturer") or its designee, shall provide tire registration forms to every distributor and dealer of its tires which offers new tires for sale or lease to tire purchasers.

(2) Each tire registration form provided to independent distributors and dealers pursuant to paragraph (a)(1) of this section shall contain space for recording the information specified in paragraphs (a)(4)(i) through (a)(4)(iii) of this section and shall conform in content and format to Figures 3a and 3b. Each form shall be:

(i) Rectangular;

(ii) Not less than 0.007 inches thick;

(iii) Greater than 3½ inches, but not greater than 4¼ inches wide; and

(iv) Greater than 5 inches, but not greater than 6 inches long.

(3) Each tire registration form provided to distributors and dealers that are not independent distributors or dealers pursuant to paragraph (a)(1) of this section shall be similar in format and size to Figure 4 and shall contain space for recording the information specified in paragraphs (a)(4)(i) through (a)(4)(iii) of this section.

(4)(i) Name and address of the tire purchaser.

(ii) Tire identification number.

(iii) Name and address of the tire seller or other means by which the tire manufacturer can identify the tire seller.

* * * * *

§ 574.8 [Amended]

6. Section 574.8(a)(3) is revised to read as follows:

(a) *Independent distributors and dealers.*

* * * * *

(3) Before giving the registration form to the tire purchaser, the distributor or dealer shall record in the appropriate spaces provided on that form:

(i) The entire tire identification number of the tire(s) sold or leased to the tire purchaser, and

(ii) The distributor's or dealer's name and address or other means of identification known to the tire manufacturer.

* * * * *

Issued on September 24, 1991.

Jerry Ralph Curry,

Administrator.

[FR Doc. 91–23436 Filed 9–27–91; 8:45 am]

BILLING CODE 4910–59–M

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49 CFR Part 594

RIN 2127–AC98

[Docket No. 89–8; Notice 6]

Schedule of Fees Authorized by the National Traffic and Motor Vehicle Safety Act

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: The Imported Vehicle Safety Compliance Act of 1988 provides that the fees shall be reviewed, and, if appropriate, adjusted at least every 2 years. This notice adopts fees that will apply as of October 1, 1991, the beginning of fiscal year 1992.

The agency has determined that the fee for the registration will remain unchanged at $255 for applications for registered importer status, and that the annual fee for renewal of such status will also remain at $255.

The agency will also retain its present petition fee of $100 for substantially similar determinations, and $500 for others. Each vehicle imported under either determination will continue to be subject to a fee of $83. Each vehicle imported under a determination made by NHTSA on its own initiative will remain subject to the existing fee of $156.

The fee required to reimburse the U.S. Customs Service for bond processing costs will increase by twenty cents to $4.75 per bond.

EFFECTIVE DATE: The effective date of the final rule is September 30, 1991.

FOR FURTHER INFORMATION CONTACT: Taylor Vinson, Office of Chief Counsel, NHTSA, (202–366–5263).

SUPPLEMENTARY INFORMATION:

Introduction

On September 29, 1989, NHTSA adopted 49 CFR part 594, establishing the initial fees authorized by section 108 of the National Traffic and Motor Vehicle Safety Act, as amended by the Imported Vehicle Safety Compliance Act of 1988, Public Law 100–562 (54 FR 40100; See this notice for a full description of the agency's methodology and rationale in its determination of costs). The final rule adopting fees for FY 1991 was published on October 4, 1990 (55 FR 40664), after publication of a proposal on August 31, 1990 (55 FR 35694).

Section 108(c)(3)(B) (15 U.S.C. 108(c)(3)(B)) of the Act provides that the amount or rate of fees shall be reviewed, and, if appropriate, adjusted at least every 2 years. Further, the fees applicable in any fiscal year shall be established before the beginning of such year. The statute authorizes an annual fee to cover the costs of administration of the importer registration program, an annual fee or fees to cover the cost of making import eligibility determinations, and an annual fee or fees to cover the costs of processing the bond furnished to the Customs Service. Pursuant to that section, a notice of proposed rulemaking was published on July 30, 1991 (56 FR 36046) proposing appropriate fees for FY 1992, which begins October 1, 1991. No comments were received on the notice. Because the agency is not required under the statute to review and adjust fees for at least every 2 years, the amendments adopted by this notice are applicable for an indefinite period beginning October 1, 1991, rather than for a period beginning that date and ending September 30, 1992. With the exception of the bond processing fee, the agency has determined to retain the existing fees for the next fiscal year.

Requirements of the Fee Regulation

Section 594.6 Annual Fee for Administration of the Importer Registration Program

Section 108(c)(3)(A)(iii) of the Vehicle Safety Act provides that registered importers must pay "such annual fee as the Secretary establishes to cover the cost of administering the registration program. * * *." The annual fee attributable to the registration program is payable both by new applicants and by registered importers seeking to renew their registrations. The reader is referred to the notices of August 31, 1990, and September 29, 1989, for a fuller discussion of the fee and its components.

The initial component of the Registration Program Fee is the portion of the fee attributable to processing and action upon registration applications. The agency estimates that this portion of the fee is $86, and identical for both new applications and renewals.

Other costs attributable to maintenance of the registration program arise from reviewing a registrant's annual statement, and verifying the continuing validity of information already submitted. These costs also include costs attributable to revocation or suspension of a registration.

There has been a slight increase in hourly costs in FY 1991, attributable to the 4.2% raise in salaries of employees on the General Schedule that became effective January 1, 1991. Moreover, as both registered importers and NHTSA personal have become increasingly familiar with the petition process, each individual petition has required less of the agency's time. NHTSA believes that the slight increase in costs has been offset by the lesser amount of time required to administer the registration program.

The total portion attributable to maintenance of the registration program, as estimated by NHTSA, is approximately $169. When added to the $86 representing the registration application (or annual renewal) component, the cost per applicant or renewal equals $255. Therefore, NHTSA has determined that the annual registration fee, for the period beginning October 1, 1991, should remain at $255. In the event that an application is denied or withdrawn, NHTSA would refund all but $86 of this amount, or $169.

Section 594.7, 594.8 Fees to Cover Agency Costs in Making Importation Eligibility Determinations

Section 108(c)(3)(A)(iii)(II) also requires Registered Importers to pay "such other annual fee or fees as the Secretary reasonably establishes to cover the cost of * * * making the determinations under this section." Pursuant to part 593, these determinations are whether the vehicle sought to be imported is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, and certified as meeting the Federal standards, and whether it is capable of being readily modified to meet those standards, or, alternatively, where there is no substantially similar U.S. motor vehicle, whether the safety features of the vehicle comply with or are capable of being modified to comply with the U.S. standards. These determinations are made pursuant to petitions submitted by Registered Importers or manufacturers, or pursuant to determinations made upon the Administrator's initiative. Because a substantially different procedure was adopted for the second year of this program, FY 1991, the reader is referred to the August 31, 1990 notice for a fuller discussion of the cost factors of such determinations.

For FY 1991, NHTSA adopted a restructuring of its fee schedule. The cost basis previously adopted remained at $1,560 of substantially similar determinations, and at $2,150 for others. Under the restructuring, the fee for a vehicle imported under a determination made on the agency's initiative is payable by the importer of any vehicle covered by any determination made on the agency's initiative. The fee for a vehicle imported under a determination pursuant to a petition is payable in part by the petitioner and in part by importers. However, the fee to be charged for a vehicle is a pro rata share of the costs in making all the eligibility determinations in the fiscal year.

The fees that NHTSA adopted were based upon its best estimates of the number of petitions that would be filed, and the number of vehicles that would be imported pursuant to determination of eligibility made upon granting those petitions (see 55 FR 40664). However, the period covered by the estimates was the entire fiscal year of 1991. Because FY 1991 will not end until September 30, 1991, NHTSA will not be able to determine the degree of accuracy of its estimates. In the absence of final FY 1991 figures, NHTSA believes that it is not appropriate to base fees for FY 1992 upon available date, which may change as FY 1991 progresses. Therefore, NHTSA has determined that it should retain the existing fee structure for another fiscal year. During FY 1992, NHTSA will compare the accuracy of its estimates with the compliance data from FY 1991, so as to formulate a basis upon which to propose future appropriate fees.

In § 594.7(f), NHTSA specifies that it uses a year of July 1–June 30 as the basis of its calculations for petition filing fees for the next fiscal year. This basis for this specification was the necessity and

time required to prepare and publish proposed fees, to allow a sufficient amount of time to comment upon them, and to prepare and issue a final rule not later than September 30. However, experience has demonstrated that three months (July 1 to September 30) is an inadequate time to collate data, to prepare a notice of proposed rulemaking and obtain clearances, to publish the proposal and allow the preferred 45 days for comment on the proposal, to review the comments, to prepare a final rule and obtain clearances, and to issue it not later than September 30. NHTSA will review § 594.7(f) in the forthcoming year together with the final vehicle importation and petition numbers from FY 1991.

Section 594.9 Fee To Recover the Costs of Processing the Bond

Section 108(c)(3)(A)(iii)(II) also requires a registered importer to pay "such annual fee or fees as the Secretary reasonably establishes to cover the cost of processing the bond furnished to the Secretary of the Treasury" upon the importation of a nonconforming vehicle to ensure that the vehicle will be brought into compliance within a reasonable time, or if the vehicle is not brought into compliance within such time, that it is exported without cost to the United States, or abandoned to the United States.

The statute contemplates that NHTSA make a reasonable determination of the cost to the United States Custom Service of processing the bond. In essence, the cost to Customs is based upon the time that a GS 9 Step 5 employee is estimated to spend on each petition, which was judged to be 20 minutes. For a fuller discussion of these costs, the reader is again referred to the notices of August 31, 1990, and September 29, 1989.

Because of the 4.2% salary raise in the General Schedule that was effective January 1, 1991, NHTSA proposed that the current processing fee be increased by twenty cents, to $4.75, for FY 1992. This proposal is adopted.

Rulemaking Analyses

A. Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

After considering the impacts of this rulemaking action, NHTSA has determined that the action is not major within the meaning of Executive Order 12291 "Federal Regulation". It further implements Public Law 100–562 under which fees may be established to cover the costs of administering the program for registration of importers of vehicles not originally manufactured to conform to the Federal motor vehicle safety standards, of determinations that nonconforming vehicles are capable of conformity to the standards, and of reimbursing or advancing the U.S. Customs Service its costs in processing safety standards conformance bonds. It is not significant under Department of Transportation regulatory policies and procedures. The action does not involve any substantial public interest or controversy. There is no substantial effect upon State and local governments. There is no substantial impact upon a major transportation safety program. Both the number of registered importers and determinations are estimated to be comparatively small, and the number of vehicles to be imported by or through such importers in forthcoming fiscal year(s) is estimated to be 600. Nevertheless, a regulatory evaluation analyzing the economic impact of the final rule adopted on September 29, 1989, was prepared, and is available for review in the docket.

B. Regulatory Flexibility Act

The agency has also considered the effects of this action in relation to the Regulatory Flexibility Act. I certify that this action will not have a significant economic impact upon a substantial number of small entities. Although entities that currently modify nonconforming vehicles are small businesses within the meaning of the Regulatory Flexibility Act, the agency has no reason to believe that a substantial number of these companies cannot pay the fees adopted by this action. The cost to owners or purchasers of modifying nonconforming vehicles to conform with the safety standards may be expected to increase to the extent necessary to reimburse the registered importer for the fees payable to the agency for the cost of administering the registration program and making eligibility determinations, and to compensate Customs for its bond processing costs. Governmental jurisdictions will not be affected at all since they are generally neither importers nor purchasers of nonconforming motor vehicles.

C. Executive Order 12612 (Federalism)

The agency has analyzed the action in accordance with the principles and criteria contained in Executive Order 12612 "Federalism" and determined that the action does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

D. National Environmental Policy Act

NHTSA has analyzed this action for purposes of the National Environmental Policy Act. The action will not have a significant effect upon the environment because it is anticipated that the annual volume of motor vehicles imported through registered importers will not vary significantly from that existing before promulgation of the rule.

List of Subjects in 49 CFR Part 594

Imports, Motor vehicle safety, Motor vehicles.

PART 594—[AMENDED]

In consideration of the foregoing, 49 CFR part 594 is amended as follows:

1. The authority citation for part 594 continues to read as follows:

Authority: Pub. L. 100–562, 15 U.S.C. 1401, 1407; delegation of authority at 49 CFR 1.50.

§ 594.6 [Amended]

2. In § 594.6(a), the phrase "during the period October 1, 1990, through September 30, 1991," is revised to read "on and after October 1, 1991,"

3. In § 594.6(b) and (d), and § 594.7(e), the phrase "from October 1, 1990, through September 30, 1991," is revised to read "on and after October 1, 1991,".

4. In § 594.6(h), the phrase "October 1, 1990, through September 30, 1991," is revised to read "beginning October 1, 1991."

5. In § 594.6(i), the phrase "from October 1, 1990, through September 30, 1991," is revised to read "beginning October 1, 1991,".

6. Section 594.9(c) is revised to read:

§ 594.9 Fee for reimbursement of bond processing costs.

* * * * *

(c) The bond processing fee for each vehicle imported on and after October 1, 1991, for which a certificate of conformity is furnished, is $4.75.

Issued on September 25, 1991.

Jerry Ralph Curry,

Administrator.

[FR Doc. 91–23447 Filed 9–27–91; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

[Docket No. 70355-7127]

Atlantic Tuna Fisheries

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

ACTION: Notice of closure.

SUMMARY: NMFS issues this notice to close the fishery for Atlantic bluefin tuna conducted by vessels permitted in the General category and fishing for giant Atlantic bluefin tuna. Closure of this segment of the fishery is necessary because it has been determined that the annual quota for this category, minus a 50 short ton (st) (45 metric ton) set-aside amount, has been attained. Vessels permitted in the General category may continue to fish for a special 50 st (45 metric ton) quota in the area west of a straight line originating at a point on the southern shore of Long Island at 70°50'W. longitude and running SSE 150° true. The intent of this action is to prevent overharvest of the quota established for this fishery while providing a fishing opportunity in the New York Bight area.

EFFECTIVE DATE: The closure is effective from 0001 hours local time on September 27, 1991, through December 31, 1991.

FOR FURTHER INFORMATION CONTACT: Hannah Goodale, 508-281-9324.

SUPPLEMENTARY INFORMATION: Regulations promulgated under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971-971h) regulating the harvest of Atlantic bluefin tuna by persons and vessels subject to U.S. jurisdiction were published in the **Federal Register** on October 25, 1985 (50 FR 43396).

Section 285.22(a) of the regulations provides for an annual quota of 590 metric tons (mt) of giant Atlantic bluefin tuna to be harvested from the Regulatory Area by vessels permitted in the General category. The Assistant Administrator for Fisheries, NOAA (Assistant Administrator) is authorized under § 285.20(b)(1) to monitor the catch and landing statistics and, on the basis of these statistics, to project a date when the total catch of Atlantic bluefin tuna will equal any quota under § 285.22. The Assistant Administrator is further authorized under § 285.20(b)(1) to prohibit the fishing for, or retention of, Atlantic bluefin tuna by the category of gear subject to the quotas. In the case of the General category, under § 285.22(a) the Assistant Administrator may set aside an allocation for an identified area, not to exceed the greater of 50 st (45 mt) or the maximum reported landings from the identified area in any of the preceding 3 years. This set-aside is made when the Assistant Administrator has determined, based on landings reports, that fishermen in an identified area will be precluded from harvesting their share of the quota due to variations in seasonable distribution, abundance, or migration patterns and the catch rate. In addition, the governing regulations require the daily catch limit for the identified area to be set at one giant Atlantic bluefin tuna per day per vessel.

Based on landings reports, the Assistant Administrator has determined that the quota of Atlantic bluefin tuna allocated for the General category, minus a 50 st (45 mt) set-aside amount for the area identified below, has been attained. Fishing for, or retention of, giant Atlantic bluefin tuna by vessels in the General category must cease by 0001 hours September 27, 1991, except for vessels fishing and landing Atlantic bluefin tuna in the area west of a straight line originating at a point on the southern shore of Long island at 70°50'W. longitude (near the town of Moriches) and running SSE 150° true.

Other Matters

Notice of this action will be mailed to Atlantic bluefin tuna dealers and fisherman, several industry publications, associations and state agencies. This action is taken under the authority of 50 CFR 285.20, and is taken in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 285

Fisheries, Penalties, Reporting and recordkeeping requirements, Treaties.

Authority: 16 U.S.C. 971 *et seq.*

Dated: September 24, 1991.

David S. Crestin,

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

[FR Doc. 91-23421 Filed 9-24-91; 4:52 pm]

BILLING CODE 3510-22-M

50 CFR Parts 611 and 662

[Docket No. 910770-1228]

Foreign Fishing; Northern Anchovy Fishery

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

ACTION: Notice of final harvest quotas.

SUMMARY: NOAA announces the final spawning biomass and determination of harvest quotas for the northern anchovy fishery in the exclusive economic zone (EEZ) south of Point Reyes, California, for the 1991-92 fishing season. The harvest quotas have been determined by application of the formulas in the Northern Anchovy Fishery Management Plan (FMP) and its implementing regulations. Those regulations require this announcement to be made on or about August 1 each year. Because the spawning biomass is below 300,000 metric tons (mt), the U.S. optimum yield is set at 4,900 mt, plus an unspecified amount for use as live bait. There will be no quota for the reduction fishery during the 1991-92 fishing season.

EFFECTIVE DATE: September 27, 1991.

FOR FURTHER INFORMATION CONTACT: James J. Morgan, Fisheries Management and Analysis Branch, Southwest Region, NMFS, Terminal Island, California, 213-514-6667.

SUPPLEMENTARY INFORMATION: In consultation with the California Department of Fish and Game and the Southwest Fisheries Center, the Director of the Southwest Region, NMFS, (Regional Director) has made a final determination that the spawning biomass of the central subpopulation of northern anchovy, *Engraulis mordax*, is 261,000 mt. The biomass estimate is derived from the egg production method of measurement, but is based on the stock synthesis model. Documentation of the spawning biomass estimate is contained in Administrative Reporting LJ-91-14, published by the Southwest Fisheries Center, NMFS. The Regional Director had previously calculated preliminary determinations of harvest quotas for the 1991-92 anchovy fishing season, which were announced in the **Federal Register** on July 22, 1991 (56 FR 33416). At that time the spawning biomass was estimated to be 329,000 mt, which would have permitted a small reduction quota of 20,300 mt; however, an error was found during a review of the calculations and the spawning biomass has been reduced accordingly. The preliminary determinations, and the mistake discovered in applying collected data to the model, were reviewed at a public meeting of the Pacific Fishery Management Council (Council) on July 12, 1991.

One written comment was received during the comment period announced in the publication of the preliminary determination. The comment was made by the Pacific Processors' Association, Inc., after the correction to the spawning biomass estimate was announced. On behalf of some of its members, the Association requested that the Regional Director reallocate approximately 2,000 mt from the non-reduction fishery quota

to the reduction fishery quota. Such a reallocation is not provided for in the regulations and would require an amendment to the FMP.

In view of the above, and based on calculations called for by the FMP, the Regional Director establishes the final harvest quotas as follows:

1. The total U.S. harvest quota, or optimum yield (OY), of northern anchovy is 4,900 mt, plus an unspecified amount for use as live bait.

2. The total U.S. harvest quota for reduction purposes is zero mt.

3. The U.S. harvest allocation for non-reduction fishing (i.e., fishing for northern anchovy for use as dead bait and direct human consumption) is 4,900 mt.

4. There is no U.S. harvest limit for the live bait fishery.

5. The domestic annual processing capacity (DAP) is 3,208 mt. The FMP states that DAP is calculated as the maximum level of reduction plus non-reduction processing during the previous 3 years.

6. The amount allocated to joint venture processing (JVP) is zero mt because there is no history of, nor are there applications for, joint ventures.

7. Domestic annual harvest capacity (DAH) is 3,208 mt. DAH is the sum of DAP and JVP.

8. The total allowable level of foreign fishing (TALFF) is zero mt. Since the spawning biomass is below 300,000 mt, there is not enough resource for a U.S. harvest quota for reduction purposes and, therefore, under 50 CFR part 611, there is no TALFF.

Classification

This action is authorized by 50 CFR part 662 and complies with Executive Order 12291.

List of Subjects

50 CFR Part 611

Fisheries, Foreign relations.

50 CFR Part 662

Fisheries.

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

Dated: September 25, 1991.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 91-23503 Filed 9-27-91; 8:45 am]

BILLING CODE 3510-22-M

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50 CFR Part 672

[Docket No. 901184-1042]

Groundfish of the Gulf of Alaska

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

ACTION: Notice of prohibition of retention of arrowtooth flounder.

SUMMARY: NMFS is prohibiting further retention of arrowtooth flounder by any vessel fishing in the Central Regulatory Area of the Gulf of Alaska (GOA), and is requiring that arrowtooth flounder be treated in the same manner as a prohibited species and discarded. This action is necessary to prevent the arrowtooth flounder total allowable catch (TAC) in the Central Regulatory Area from being exceeded. The intent of this action is to ensure optimum use of groundfish while conserving arrowtooth flounder stocks.

DATES: Effective 12 noon, Alaska local time (A.l.t.), September 25, 1991, through midnight, A.l.t., December 31, 1991.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Resource Management Specialist, NMFS, 907-586-7228.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) governs the groundfish fishery in the exclusive economic zone within the Gulf of Alaska under the Magnuson Fishery Conservation and Management Act. The FMP was prepared by the North Pacific Fishery Management Council and is implemented by regulations for the foreign fisheries at 50 CFR 611.92 and for the U.S. fisheries at 50 CFR parts 620 and 672.

The amount of a species or species group apportioned to a fishery is the TAC as defined at §§ 672.20(a)(2) and 672.20(c)(1). The final notice of 1991 initial specifications of groundfish established the arrowtooth flounder TAC in the Central Regulatory Area at 10,000 mt (March 1, 1991; 56 FR 8723).

Under § 672.20(c)(3) the Director, Alaska Region, NMFS, has determined that the arrowtooth flounder TAC in the Central Regulatory Area has been reached. Therefore, NMFS is declaring that arrowtooth flounder must be treated as a prohibited species in the Central Regulatory Area under § 672.20(e) and may not be retained. This action is effective from 12 noon, A.l.t., September 25, 1991, through 12 midnight, A.l.t., December 31, 1991.

Classification

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

List of Subjects in 50 CFR Part 672

Fish, Fisheries, Reporting and recordkeeping requirements.

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

Dated: September 24, 1991.

David S. Crestin,

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

[FR Doc. 91-23420 Filed 9-24-91; 4:52 p.m.]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 56, No. 189
Monday, September 30, 1991

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 907

[Docket No. FV-91-408PR]

Navel Oranges Grown in Arizona and Designated Part of California; Proposed Weekly Levels of Volume Regulation for the 1991-92 Season

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule invites comments on the need for regulation of the quantity of fresh California–Arizona navel oranges that may be shipped to domestic markets, the weekly shipping schedule and the weekly percentage allocation between districts, and the dates for the onset and duration of volume regulation for the 1991–92 navel orange season. Consistent with program objectives, such action may be needed to establish and maintain orderly marketing conditions for fresh California-Arizona navel oranges during the 1991–92 season. This proposal is based on a marketing policy which was adopted by the Navel Orange Administrative Committee (Committee) on June 25, 1991. The Committee locally administers the marketing order covering navel oranges grown in Arizona and a designated part of California.

DATES: Comments must be received by October 30, 1991.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule. Comments must be sent in triplicate to the Docket Clerk, room 2525–S, F&V, AMS, USDA, P.O. Box 96456, Washington, DC 20090–6456. Such 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: Maureen T. Pello, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, room 2524–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 447–5120.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Order No. 907 (7 CFR part 907), as amended, regulating the handling of navel oranges grown in Arizona and a designated part of California, hereinafter referred to as the "order." The 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 U.S. Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this 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 130 handlers of navel oranges who are subject to regulation under the marketing order and approximately 4,000 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) 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 producers and handlers of California-Arizona navel oranges may be classified as small entities.

The Administrator of the AMS has determined that this proposed rule would not have a significant economic impact on a substantial number of small entities.

The declaration of policy in the Act includes a provision concerning establishing and maintaining such orderly marketing conditions as will provide, in the interest of producers and consumers, an orderly flow of the supply of a commodity throughout the normal marketing season to avoid unreasonable fluctuations in supplies and prices. Limiting the quantity of California-Arizona navel oranges that each handler may handle on a weekly basis may contribute to the Act's objectives of orderly marketing and improving producers' returns.

The navel orange, like many citrus varieties, is unique in that mature oranges can be stored on the tree, to be marketed at a later time. Usually a high proportion of the crop is mature early in the season and could be marketed; but markets may be insufficient to absorb that quantity of fruit in a short period of time at satisfactory price levels. The on-tree storage characteristic of the navel orange permits the effective use of the flow-to-market (volume regulation) provisions of the order. Thus, volume regulations can be a valuable tool in achieving the goal of market stabilization for navel oranges.

The major reason for the use of volume regulations under the navel orange marketing order is to establish and maintain orderly marketing conditions for navel oranges and thereby benefit producers through higher returns. Such regulation can at the same time benefit consumers by maintaining adequate supplies of navel oranges in the marketplace during the season.

The navel orange marketing order also contains a variety of provisions designed to provide handlers with marketing flexibility within an established volume regulation week. When volume regulation is established by the Secretary for a given week, the Committee calculates the quantity of oranges (allotment) which may be handled by each handler. The provisions of the order allow handlers to ship navel oranges in excess of their allotments, within specified limits, in response to marketing opportunities. The order includes provisions for: (1) Marketing incentive allotments; (2) shipment of oranges in excess of a handler's allotment (overshipments); (3) shipment of oranges in quantities less than a handler's allotment (undershipments); and (4) allotment loans. Marketing

incentive allotments provide handlers additional allotment (up to 10 percent of each handler's weekly allotment for a specified number of weeks) for market development programs and allow handlers to take advantage of special marketing opportunities. Handlers who went to ship more than their allotment are permitted to overship that amount by one car (one car equals 1,000 cartons at 37.5 pounds net weight each) or by 20 percent of their allotment level, whichever is greater. A handler may overship in a given week, but the overshipment must be offset against the following week's allotment. Handlers may also ship less than their allotment during a given week which would give them the opportunity to ship more than their allotment during the next two succeeding weeks. Finally, handlers may borrow allotment from other handlers who choose to ship less than their allotment or who cannot fully utilize their allotment.

In addition, the order includes provisions that exempt the handling of certain navel oranges from volume regulation. Oranges which are used for the following purposes are exempt from volume regulation: (1) Charitable institutions or relief organizations for distribution by such agencies; (2) commercial processors for processing into products, including juice; (3) export markets; and (4) parcel post and express shipments. The Committee may also recommend for approval by the Secretary the exemption of minimum quantities of oranges from order provisions.

Pursuant to § 907.50 of the marketing order, the Committee is required to submit a marketing policy to the Secretary prior to recommending volume regulations for the ensuing season. The order authorizes volume and size regulations applicable to fresh shipments of California-Arizona navel oranges to markets in the continental United States and Canada. The marketing order does not authorize regulation of export shipments of navel oranges or navel oranges utilized in the production of processed orange products.

The Committee adopted its marketing policy for the 1991–92 season at its June 25, 1991, meeting in Newhall, California. The Committee plans to present its policy at district meetings for further discussion and review. Those meetings are tentatively scheduled as follows: (1) Districts 1 and 4 on September 24, 1991; and (2) District 2 and 3 on October 1, 1991.

The Committee estimates the 1991–92 navel orange crop will total 58,700 cars. This compares to last year's total production of only 32,895 cars due to the severe freeze suffered throughout the production area in December 1990. The National Agricultural Statistics Service's forecast of the 1991–92 California-Arizona navel orange crop will be available in October.

The Committee estimates District 1, Central California, 1991–92 production at 50,000 cars compared to 26,026 cars produced in 1990–91. In District 2, Southern California, the crop is expected to be 7,500 cars compared to 5,808 cars produced last year. In District 3, the Arizona-California Desert Valley, the Committee estimates a production of 950 cars compared to 893 cars produced last year. In District 4, Northern California, the crop is expected to be 250 cars compared to 168 cars produced last year. The Committee's production estimates are based primarily on historical data with some modification to account for the damage caused by last year's freeze. These estimates are expected to be modified as the season progresses.

The Committee reported that navel orange groves throughout the production area appear to have a high percentage of "popcorn bloom" (a predominance of flowers borne on leafless inflorescence), particularly in Districts 1 and 4, the districts hardest hit by last year's freeze. "Popcorn bloom" tends to create a high degree of uncertainty in the potential crop volume as well as fruit size composition. As a result, the Committee is uncertain about the crop potential at this time. The fact that the trees are just past petal fall and have not experienced the natural thinning of the crop by "June drop" also adds further uncertainties. In addition, the young fruit has not yet developed enough to give any indications of texture or appearance.

According to the Committee, groves in District 1 representing approximately 70 percent of the district's potential bearing acreage have a bloom sufficient to set a crop. However, the long duration of the bloom as well as its lateness may result in fruit maturity testing problems. In addition, there has been considerable pruning, hedging, and topping of navel orange trees in order to remove frost-damaged wood, which may also have an affect on the total crop. District 2's crop development is progressing favorably with a wide range in size at this time. Currently, the fruit set is highly variable, not only between groves but also between various sections of the trees within a grove. District 3's production at present is reported to be above average in appearance. Crop conditions in District 4 are reported as very problematic. The district's freeze damage was extremely severe and as a result the bloom is extremely variable.

There may be times when small sizes as well as excessively large sizes will be shipped in fresh fruit channels at heavily discounted prices which could produce a negative return to producers. Such discounting could be disruptive to the orderly marketing of navel oranges. This condition could be alleviated through the use of size regulations authorized under the marketing order. The Committee has indicated that if size regulation would achieve program objectives, it would make such recommendations to the Secretary. There is no size regulation in effect during the current season.

The three basic outlets for California-Arizona navel oranges are the domestic fresh, export, and processing markets. The domestic (regulated) fresh market is a preferred market for California-Arizona navel oranges while the export market continues to grow. Japan and Hong Kong continue to be the leading export markets for navel oranges. Navel oranges which are diverted to processing are generally those oranges which do not meet quality requirements or are too small to market economically as fresh fruit.

In terms of total crop utilization, the Committee estimates that approximately 40,500 cars of the 1991–92 crop (69 percent) will be utilized in fresh domestic markets compared with 16,675 cars (51 percent) in 1990–91; fresh exports are projected at 7,000 cars (12 percent) of the total 1991–92 crop compared to 2,456 cars (7 percent) in 1990–91; and 11,200 cars (19 percent) of the 1991–92 crop will be utilized in by-product channels and other forms of processing compared with 13,764 cars (42 percent) in 1990–91. The Committee's 1991–92 crop utilization estimates, like its production estimates, are also expected to be revised during the season.

The 1991–92 season average on-tree price for California-Arizona navel oranges is not expected to exceed the season's average fresh parity equivalent price. Domestic fresh utilization about equal to the Committee's mid-point estimate of 40,500 cars is expected to result in a season average fresh on-tree price of $4.96 per carton, about 66 percent of the estimated fresh on-tree parity equivalent price of $7.50 per carton. In contrast, the preliminary estimate of the 1990–91 season average fresh on-tree price is $7.29 per carton, or 112 percent of the preliminary season average on-tree parity equivalent price of $6.52 per carton.

It is our view, based on the Committee's deliberations and the marketing policy, that the Committee may recommend the implementation of volume regulation for the 1991–92 season. At this time, the Committee is uncertain as to when the beginning of harvest may occur and when volume recommendations could first be recommended to the Secretary. However, the Committee considers it essential to establish orderly marketing conditions through volume regulation early in the season whenever there is a large quantity of early maturing fruit available for shipment. According to the Committee, recommendations for volume regulation would cease when it is clear that they are no longer necessary to achieve orderly marketing conditions. At this time the Committee estimates that recommendations for volume regulation, if deemed appropriate, could continue through the month of May.

The shipping schedule as proposed would begin with the week ending on October 24, 1991. The Committee's current schedule lists shipments through the week ending on May 21, 1992. Therefore, this proposed rule would provide for volume regulation for the period from the week ending on October 24, 1991, through the week ending on May 21, 1992.

Based on the information available and for the purposes of this rule making process, the Committee recommended to the Secretary a proposed weekly schedule of the quantities of navel oranges that can be shipped, if volume regulation is recommended, approved and implemented for the 1991–92 season. The proposed shipping schedule is based on the initial crop estimate. Due to the anticipated normal distribution of orange sizes and crop conditions, the Committee estimates that fresh domestic shipments this season will be between 38,475 and 42,525 cars. The shipping schedule is therefore based on the mid-point total of 40,500 cars. This figure may be adjusted to reflect revised crop estimates throughout the season. The shipping schedule is proposed to be specified in a new § 907.1021 of the marketing order's rules and regulations.

In developing the proposed shipping schedule, the Committee considered equity of marketing opportunity and established an equity factor pursuant to § 907.51(b). The Committee compiles production estimates in cars for each district. These production estimates are based on the entire anticipated tree crop in each district. The Committee combines these production estimates to project the total production for all four districts. The Committee then projects the number of cars that could be marketed in fresh domestic channels. From the relationship between these two totals an equity factor is derived and then applied to each district's estimated production in order to determine the estimated amount of each district's production that could be moved into fresh domestic markets under regulation. Therefore, all districts, no matter how much handlers ship weekly to fresh domestic markets, should be provided the opportunity to ship, under volume regulation, the same proportionate amount to fresh domestic markets during the season. The equity factor for this season is 73 percent and is the same for all districts.

The shipping schedule also establishes the percentage allocation, pursuant to § 907.110(d) of the regulations, for each district for each week which is used to determine each district's proportionate share of volume regulations issued for a particular week. Each districts's volume limitation for a particular week is then equitably apportioned among all handlers in each district. Thus, each handler's individual allotment is based on the entire quantity of navel oranges available for all uses, including export.

The Department invites comments on the need for volume regulation during the 1991–92 fiscal year, the proposed shipping schedule, the percentage allocation shown in the shipping schedule, and the beginning and ending dates of regulation. Comments proposing alternative levels of shipments and beginning and ending dates for regulation, including no regulation, for the 1991–92 season should provide as much information as possible in support of their suggested alternatives. Interested persons are also invited to comment on the possible regulatory and informational impact of this marketing policy and volume regulations on small businesses.

The Department will analyze comments received in response to this proposed rule and, if warranted, issue a final rule which would include an analysis of the comments received. Throughout the season, the Committee meets on a weekly basis to consider current and prospective marketing conditions. If this rule is adopted and regulation is implemented during the 1991–92 season, the Committee would be expected to recommend amendments, when necessary, to the amounts allotted for each district for the upcoming week and to provide adequate justification for levels of regulation different from the established shipping schedule. If warranted, the Department would issue a rule amending the established schedule.

This proposed rule is based on information currently available. The issuance of this proposed rule does not preclude the possibility that crop and/or marketing conditions could change and that the Committee may recommend the implementation of volume regulations sooner or later than contemplated by the proposed rule. As more information becomes available, the Committee may find it necessary or desirable to revise the shipping schedule proposed herein. The Department would consider the Committee's recommendations and take whatever action is appropriate under the order to achieve the order's and the Act's purposes and objectives.

In addition, in accordance with the Paperwork Reduction Act of 1980 [44 U.S.C. 3504], the information collection provisions that are provided for in the California-Arizona navel and Valencia orange marketing orders [7 CFR part 907 and part 908] have been approved by the Office of Management and Budget (OMB) on a scheduled three-year cycle and assigned OMB control No. 0581–0116 and OMB control No. 0581–0121, respectively. Because of last year's freeze, the Committees currently have an oversupply of navel and Valencia orange forms that are due to expire in the fall of 1991. Approval from the OMB has been received to utilize the existing inventory of forms. Accordingly, the Department hereby gives notification to handlers and the industry of such action The Committees will notify handlers separately regarding use of the forms.

List of Subjects in 7 CFR Part 907

Marketing agreements, Oranges, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 907 is proposed to be amended as follows:

PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

1. The authority citation for 7 CFR part 907 continues to read as follows:

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

2. A new § 907.1021 is added to read as follows:

§ 907.1021 Navel orange regulation 721.

The shipping schedule below establishes the quantities of navel oranges grown in California and Arizona, by district, which may be handled during the specified weeks as follows:

Week ending	District 1 cartons/ percent (000)	District 2 cartons/ percent (000)	District 3 cartons/ percent (000)	District 4 cartons/ percent (000)	Total cartons (000)
(a) 10-24-91	50/100.0				50
(b) 10-31-91	440/97.9		10/2.1		450
(c) 11-07-91	952/95.2		48/4.8		1,000
(d) 11-14-91	1,028/93.5	10/0.9	62/5.6		1,100
(e) 11-21-91	1,124/93.7	10/0.8	66/5.5		1,200
(f) 11-28-91	1,310/93.6	14/1.0	72/5.1	4/0.3	1,400
(g) 12-05-91	1,475/92.2	29/1.8	77/4.8	19/1.2	1,600
(h) 12-12-91	1,613/89.6	72/4.0	86/4.8	29/1.6	1,800
(i) 12-19-91	1,501/88.3	77/4.5	85/5.0	37/2.2	1,700
(j) 12-26-91	676/84.5	71/8.9	38/4.8	15/1.8	800
(k) 01-02-92	700/77.8	138/15.3	38/4.2	24/2.7	900
(l) 01-09-92	961/80.1	191/15.9	29/2.4	19/1.6	1,200
(m) 01-16-92	961/80.1	196/16.3	24/2.0	19/1.6	1,200
(n) 01-23-92	1,148/82.0	232/16.6	14/1.0	6/0.4	1,400
(o) 01-30-92	1,158/82.7	232/16.6	10/0.7		1,400
(p) 02-06-92	1,333/83.3	267/16.7			1,600
(q) 02-13-92	1,333/83.3	267.16.7			1,600
(r) 02-20-92	1,333/83.3	267/16.7			1,600
(s) 02-27-92	1,333/83.3	267/16.7			1,600
(t) 03-05-92	1,414/83.2	286/16.8			1,700
(u) 03-12-92	1,414/83.2	286/16.8			1,700
(v) 03-19-92	1,414/83.2	286/16.8			1,700
(w) 03-26-92	1,414/83.2	286/16.8			1,700
(x) 04-02-92	1,414/83.2	286/16.8			1,700
(y) 04-09-92	1,414/83.2	286/16.8			1,700
(z) 04-16-92	1,414/83.2	286/16.8			1,700
(aa) 04-23-92	1,414/83.2	286/16.8			1,700
(bb) 04-30-92	1,248/83.2	252/16.8			1,500
(cc) 05-07-92	914/83.1	186/16.9			1,100
(dd) 05-14-92	418/83.7	82/16.3			500
(ee) 05-21-92	166/83.2	34/16.8			200

Dated: September 24, 1991.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91-23406 Filed 9-27-91; 8:45 am]

BILLING CODE 3410-02-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 11

RIN 3150-AE03

DOE-L or DOE-Q Reinvestigation Program for NRC-R Access Authorization Renewal Requirements

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) proposes to amend its regulations to allow an exception to NRC-R access authorization renewal requirements. The proposed rule would allow acceptance of the DOE-L or DOE-Q Reinvestigation Program for NRC-R access authorization renewal requirements and clarify for the licensee the documentation required by the NRC when an exception is used. The proposed rule is intended to reduce administrative and investigative costs to the licensee and administrative costs to the Federal government.

DATES: The comment period expires October 30, 1991. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Mail written comments to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, attention: Docketing and Service Branch. Deliver comments to One White Flint North, 11555 Rockville Pike, Rockville, Maryland, between 7:30 am and 4:15 pm Federal workdays.

Copies of the regulatory analysis and comments received may be examined at room LL6, 2120 L Street, NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Rocio Castaneira, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492-0392.

SUPPLEMENTARY INFORMATION:

Background

In 1985, 10 CFR part 11, "Criteria and Procedures for Determining Eligibility for Access to or Control over Special Nuclear Material" was amended in § 11.15 to allow, among other things, an exception in the access authorization renewal requirements for NRC-U renewals. An NRC-U special nuclear material access authorization is required for—

(1) All positions in the licenee's security force;

(2) Management positions with the authority to direct the actions of members of the security force or alter security procedures, direct routine movements of special nuclear material, or direct the routine status of vital equipment;

(3) All jobs which require unescorted access within onsite alarm stations; and

(4) All jobs which require unescorted access to special nuclear material or within vital areas.

The NRC provided an exception in § 11.15 that allowed individuals subject to the Department of Energy's (DOE) Selective Reinvestigation Program for DOE-Q access authorization to use the DOE reinvestigation for NRC-U renewal requirements. The investigative basis for the DOE-Q is comparable to the investigative basis of the NRC-U. Allowing this exception for NRC-U renewal requirements reduced administrative and investigative costs to the licensees and avoided duplicate investigations of an individual.

However, in 1985, the DOE-L Selective Reinvestigation Program did not meet NRC-R renewal requirements. Therefore, no provisions were made for allowing the use of the DOE-L Selective Reinvestigation Program for NRC-R renewal requirements. An NRC-R

special nuclear material access authorization is required for an individual whose job requires unescorted access within protected areas but does not fall within any of the categories that require an NRC–U access authorization.

Subsequently, DOE implemented an "L" Reinvestigation Program which meets NRC–R renewal requirements. Accordingly, the NRC has determined that it would be appropriate to amend part 11 to include the DOE–L program. The NRC has also determined that allowing the DOE–Q Reinvestigation Program for NRC–R renewal requirements would be appropriate. The NRC has found that many individuals that have NRC–R access authorizations also have DOE–Q clearances and are thereby subject to reinvestigation by DOE.

Additionally, the NRC has found that it is unnecessary to require the submission of fingerprint cards for NRC–U or NRC–R renewals when the applicant is filing under the exception provided for in § 11.15 because the cards duplicate those already submitted to the DOE. Finally, the title of the DOE program is changed to reflect its current title, i.e., "DOE Reinvestigation Program."

Environmental Impact: Categorical Exclusion

The NRC has determined that this regulation is the type of action described as a categorical exclusion in 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this proposed rule.

Paperwork Reduction Act Statement

This proposed rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget, approval number 3150–0062.

Regulatory Analysis

The Commission has prepared a regulatory analysis on this proposed regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The analysis is available for inspection in the NRC Public Document Room, room LL6, 2120 L Street, NW. (Lower Level), Washington, DC. Single copies of the analysis may be obtained from Ms. Rocio Castaneira Division of Safeguards and Transportation/Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–0392.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this proposed rule does not have a significant economic impact upon a substantial number of small entities. The proposed rule affects three nuclear fuel facility licensees. Because these licensees are not classified as small entities as defined by the NRC's size standards (December 9, 1985; 50 FR 50241), the Commission finds that this proposed rule does not have a significant economic impact upon a substantial number of small entities.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109 does not apply to this proposed rule, and therefore, that a backfit analysis is not required because these amendments do not involve any provisions which would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects in 10 CFR Part 11

Hazardous materials—transportation, Investigations, Nuclear materials, Reporting and recordkeeping requirements, Security measures, Special nuclear material.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR part 11.

PART 11—CRITERIA AND PROCEDURES FOR DETERMINING ELIGIBILITY FOR ACCESS TO OR CONTROL OVER SPECIAL NUCLEAR MATERIAL

1. The authority citation for part 11 continues to read as follows:

Authority: Sec. 161, 68 stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Section 11.15(e) also issued under sec. 501, 85 Stat. 290 (31 U.S.C. 483a).

2. In § 11.15, paragraph (c)(2) is revised, paragraph (c)(3) is revised and redesignated as paragraph (c)(5) and new paragraphs (c)(3) and (c)(4) are added to read as follows:

§ 11.15 Application for special nuclear material access authorization.

* * * * *

(c) * * *

(2) An exception to the NRC–U special nuclear material access authorization expiration date and the time for submission of NRC–U special nuclear material access authorization renewal applications is provided for those individuals who have a current and active DOE–Q access authorization and who are subject to DOE Reinvestigation Program requirements. For these individuals, the time for submission of NRC–U special nuclear material access authorization renewal applications may coincide with the time for submission to DOE of the SF–86 pursuant to DOE Reinvestigation Program requirements. The licensee may submit to NRC, concurrent with its submission to DOE, a copy of the SF–86 which is dated and bears the individual's original signature, together with the forms and information required by paragraphs (c)(1) (i), and (iv) of this section, as the supporting documentation for an NRC–U special nuclear material access authorization renewal application. Any NRC–U special nuclear material access authorization issued in response to a renewal application submitted pursuant to this paragraph will not expire until the date set by DOE for the next reinvestigation of the individual pursuant to DOE's Reinvestigation Program (generally every five years). NRC–U special nuclear material access authorizations for which timely applications for renewal have been made may be continued beyond the expiration date, pending final action on the application.

(3) An exception to the NRC–R special nuclear material access authorization expiration date and the time for submission of NRC–R special nuclear material access authorization renewal applications is provided for those individuals who have a current and active DOE–L or DOE–Q access authorization and who are subject to DOE Reinvestigation Program requirements. For these individuals, the time for submission of NRC–R special nuclear material access authorization renewal applications may coincide with the time for submission to DOE of the SF–86 pursuant to DOE Reinvestigation Program requirements. The licensee may submit to NRC, concurrent with its submission to DOE, a copy of the SF–86 which is dated and bears the individual's original signature, together with the forms and information required by paragraph (c)(1)(iv) of this section, as the supporting documentation for an NRC–R special nuclear material access authorization renewal application. Any NRC–R special nuclear material access authorization issued in response to a renewal application submitted pursuant to this paragraph will not expire until

the date set by DOE for the next reinvestigation of the individual pursuant to DOE's Reinvestigation Program (generally every five years). NRC–R special nuclear material access authorizations for which timely applications for renewal have been made may be continued beyond the expiration date, pending final action on the application.

(4) If the licensee uses either of the exceptions as specified in paragraphs (c)(2) or (c)(3) of this section for an individual who is subject to an NRC–U or NRC–R reinvestigation, the licensee shall submit at that time, (and at the time of each subsequent reinvestigation) concurrent with its submission to DOE, even if less than five years has passed since the date of the issuance or renewal of the NRC–U or NRC–R access authorization, a copy of the SF–86 which is dated and bears the individual's original signature, together with the forms and information required by paragraphs (c)(1) (i), and (iv) for NRC–U renewal requests or the information required by paragraph (c)(1)(iv) for NRC–R renewal requests as the supporting documentation for the renewal application. Failure to file a renewal application concurrent with the time for submission of an individual's SF–86 to DOE pursuant to DOE Reinvestigation Program requirements will result in the expiration of the individual's NRC special nuclear material access authorization.

(5) Notwithstanding the provisions of paragraphs (c)(2), (c)(3), or (c)(4) of this section, the period of time for the initial and each subsequent NRC–U or NRC–R renewal application to NRC may not exceed 7 years. Any individual who is subject to the DOE Reinvestigation Program requirements but, for administrative or other reasons, does not submit reinvestigation forms to DOE within 7 years of the previous submission, shall submit a renewal application to NRC using the forms prescribed in paragraph (c)(1) of this section before the expiration of the 7 year period. Failure to request an NRC–U or NRC–R renewal for any individual within the 7 year period will result in termination of the individual's NRC–U or NRC–R access authorization.

* * * * *

Dated at Rockville, Maryland this 18th day of September, 1991.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 91–23477 Filed 9–27–91; 8:45 am]

BILLING CODE 7590–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91–NM–164–AD]

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes, which would require modification of the lever and bracket assemblies and connecting bolts for the off-wing escape slide compartment door opening actuators. This proposal is prompted by reports of operators unable to adjust the travel on the actuator firing pins to obtain the required engagement, and insufficient connecting bolt length. This condition, if not corrected, could result in an inadvertent in-flight off-wing escape slide deployment during flight and consequent damage to the airplane, or failure of the off-wing escape system to deploy when required for an emergency evacuation.

DATES: Comments must be received no later than November 12, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM–103, Attention: Airworthiness Rules Docket No. 91–NM–164–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. The applicable service information may be obtained from being Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Jayson Claar, Seattle Aircraft Certification Office, Airframe Branch, ANM–120S; telephone (206) 227–2784. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 91–NM–164–AD." The post card will be date/time stamped and returned to the commenter.

Discussion

Several operators of Boeing Model 767 series airplanes have reported that they were unable to obtain the minimum firing pin travel required when re-rigging the off-wing escape system with a new escape slide compartment door opening actuator. To ensure that minimum firing pin travel is obtained, the lever that connects the door opening actuator output shaft to the integrator input shaft was modified. The attachment bracket for the lever was also modified. These modifications corrected the insufficient firing pin travel; however, the bolt that connects the lever to the attachment bracket has been found to have insufficient length to ensure proper retention of the lever. Failure to obtain the minimum firing pin travel may result in an inadvertent in-flight off-wing escape slide deployment during flight and consequent damage to the airplane, or failure of the off-wing escape system to deploy when required for an emergency evacuation.

The FAA has reviewed and approved Boeing Service Bulletin 767–25–0137, Revision 1, dated May 9, 1991, which describes modification of the lever, bracket, and attachment bolts connecting the off-wing escape slide door open actuator and the off-wing system integrator. The modifications will increase the maximum travel of the actuator firing pin. This is intended to prevent the addressed problem.

Since this condition is likely to exist on other airplanes of this same type design, and AD is proposed which would require modification of the off-wing escape slide deployment system in accordance with the service bulletin previously described.

There are approximately 318 Model 767 series airplanes of the affected design in the worldwide fleet. It is estimated that 131 airplanes of U.S. registry would be affected by this AD, that it would take approximately 8 manhours per airplane to accomplish the required actions, and that the average labor cost would be $55 per manhour. Modification parts will be provided by the manufacturer at no cost to operators. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $57,640.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket No. 91–NM–164–AD.

Applicability: Model 767 series airplanes, as listed in Boeing Service Bulletin 767–25–0137, Revision 1, dated May 9, 1991, certificated in any category.

Compliance: Required within the next 18 months after the effective date of this AD, unless previously accomplished.

To ensure proper deployment of the off-wing escape system, accomplish the following:

(a) Modify the off-wing escape system in accordance with Boeing Service Bulletin 767–25–0137, Revision 1, dated May 9, 1991.

(b) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Seattle ACO.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on September 10, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91–23452 Filed 9–27–91; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 91–NM–168–AD]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, which would require installation of a decompression panel and flapper valve in the aft lower lobe at station 1920. This proposal is prompted by one operator's report that the decompression panel and flapper valve were not installed on some of its airplanes. This condition, if not corrected, could result in an uncontrollable fire in the aft lower lobe, if a fire breaks out in that compartment.

DATES: Comments must be received no later than November 12, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM–103, Attention: Airworthiness Rules Docket No. 91–NM–168–AD, 1601 Lind Avenue SW., Renton, Washington, 98055–4056. The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth W. Frey, Seattle Aircraft Certification Office, Systems and Equipment Branch, ANM–130S; telephone (206) 227–2673. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 91–NM–168–AD." The

post card will be date/time stamped and returned to the commenter.

Discussion

One operator of Boeing Model 747 Series airplanes reported that the air control valve installation in the aft lower lobe compartment at station 1920 was not installed on some of its airplanes. The air control valve installation consists of a decompression panel and a flapper valve. If the decompression panel and flapper valve are not installed in a Class C aft lower lobe compartment, halon fire extinguishing agent released in response to a fire will leak out through the hole where the air control valve was to be installed, allowing the fire to burn uncontrolled. If the decompression panel and flapper valve are not installed in a Class E aft lower lobe compartment, air leakage through the hole will provide a source of oxygen to any fire that breaks out in the compartment.

The FAA has reviewed and approved Boeing Alert Service Bulletin 747–21A2312, and Boeing Service Bulletin 747–21–2317, both dated May 30, 1991, which describe the procedures to install a decompression panel and flapper valve in the aft lower lobe at station 1920. This installation will reduce halon leakage in aft lower lobe Class C cargo compartments by decreasing the area available for halon to exit the compartment. This installation will also enable reduced air flow during a fire in the aft lower lobe Class E cargo compartments. Additionally, the required type design extinguishing capability will be achieved with the installation of the decompression panel and flapper valve.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require installation of a decompression panel and flapper valve, in accordance with the service bulletin previously described.

There are approximately 14 Model 747 series airplanes of the affected design in the worldwide fleet. It is estimated that 4 airplanes of U.S. registry would be affected by this AD, that it would take approximately 8 manhours per airplane to accomplish the required actions, and that the average labor cost would be $55 per manhour. The estimated cost of part is $346 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $3,144.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subject in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket No. 91–NM–168–AD.

Applicability: Model 747 series airplanes; as listed in Boeing Alert Service Bulletin 747–21A2312, and in Boeing Service bulletin 747–21–2317, both dated May 30 1990; certificated in any category.

Compliance: Required within the next 60 days after the effective date of this AD, unless previously accomplished.

To reduce the potential for an uncontrollable fire in the aft lower lobe compartment, accomplish the following:

(a) Install a decompression panel flapper valve in accordance with Boeing Alert Service Bulletin 747–21A2312, or Boeing Service Bulletin 747–21–2317, both dated May 30, 1991, as applicable.

(b) An Alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Seattle ACO.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1610 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on September 10, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91–23451 Filed 9–27–91; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 91–CE–62–AD]

Airworthiness Directives; British Aerospace (BAe) Limited Jetstream Model 3201 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD) that would be applicable to BAe Limited Jetstream Model 3201 airplanes. This proposed action would require a cold work expansion process to the bolt holes in the wing spar webs. Fatigue cracks have been found around the periphery of the three fuel tank access panels of the wing spar webs at Wing Station (WS) 36 and WS 83. The actions specified in this proposed AD are intended to prevent fatigue failure of the wing structure on the affected airplanes.

DATES: Comments must be received on or before November 22, 1991.

ADDRESSES: BAe Service Bulletin 57–JM 8160, dated June 19, 1991, that is discussed in this AD may be obtained from British Aerospace, Manager Product Support, Commercial Aircraft Limited, Airlines Division, Prestwick Airport, Ayrshire, KA9 2RW Scotland; Telephone (44–292) 79888; Facsimile (44–292) 79703; or British Aerospace, Inc., Librarian, Box 17414, Dulles International Airport, Washington, DC, 20041; Telephone (703) 435–9100; Facsimile (703) 435–2628. This information also may be examined at the Rules Docket at the address below. Send comments on the proposal in

triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91–CE–62–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. Raymond A. Stoer, Project Manager, Brussels Aircraft Certification Office, Europe, Africa, Middle East Office, FAA, c/o American Embassy, 1000 Brussels, Belgium; Telephone 322.513.38.30 extension 2710; or Mr. John P. Dow, Sr., Project Officer, Small Airplane Directorate, Aircraft Certification Service, FAA, 601 E. 12th Street, Kansas City Missouri 64106; Telephone (816) 426–6932; Facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91–CE–62–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that several cracks have been found around the periphery of the three fuel tank access panels on the main wing spar web between Wing Station (WS) 36 and WS 83 on a BAe Limited Jetstream Model 3201 wing fatigue test specimen. The CAA reports that cracks in this area could reduce the established fatigue life of the wing. The manufacturer, British Aerospace (BAe) Limited has issued Service Bulletin 57–JM 5160, dated June 19, 1991, which specifies a cold work expansion process to the 5/16 inch diameter bolt holes around the periphery of the three fuel tank access panels on the wing main spar webs between WS 36 and WS 83. The CAA classified this service bulletin as mandatory in order to assure the airworthiness of these airplanes in the United Kingdom. The airplanes are manufactured in the United Kingdom and are type certificated for operation in the United States. Pursuant to a bilateral airworthiness agreement, the CAA has kept the FAA totally informed of the above situation.

The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States. Since this condition could exist or develop in other BAe, Limited Jetstream Model 3201 airplanes of the same type design, the proposed AD would require a cold work expansion process to the 5/16 inch diameter bolt holes around the periphery of the three fuel tank access panels on the wing main spar webs between WS 36 and WS 83 in accordance with the Accomplishment Instructions of BAe SB 57–JM 5160, dated June 19, 1991.

It is estimated that 89 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 70 hours per airplane to accomplish the proposed action, and that the average labor rate is approximately $55 an hour. Parts would be provided by the manufacturer at no cost to the operator. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $342,650. The FAA anticipates that the proposed compliance schedule would allow sufficient scheduling flexibility so that operators could accomplish the proposed actions during regularly scheduled maintenance, which would reduce the cost per airplane per operator for this proposed action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **"ADDRESSES".**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposed to amend 14 CFR Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new Ad:

British Aerospace (BAe), Limited: Docket No. 91–CE–62–AD.

Applicability: Jetstream Model 3201 Airplane (serial numbers 1 through 922), certificated in any category.

Compliance: Upon the accumulation of 6,000 landings, or within the next 1,000 landings after the effective date of this AD, whichever occurs later, unless already accomplished.

Note: If no record of landings is maintained, hours time-in-service (TIS) may be used with one hour TIS equal to two landings. For example, 100 hours TIS is equal to 200 landings.

To prevent fatigue failure of the wing structure, accomplish the following:

(a) Modify the 5/16 inch diameter blot holes around the periphery of the three fuel tank access panels on the wing main spar webs between Wing Station (WS) 36 and WS 83 in accordance with the Accomplishment Instructions of BAe Service Bulletin 57–JM 8160, dated June 19, 1991.

(b) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to

operate the airplane to a location where the requirements of this Ad can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Brussels Aircraft Certification Office, Europe, Africa, Middle East Office, FAA, c/o American Embassy, 1000 Brussels, Belgium. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Brussels Aircraft Certification Office.

(d) All persons affected by this directive may obtain copies of the document referred to herein upon request to British Aerospace, Manager Product Support, Commercial Aircraft Limited, Airlines Division, Prestwick Airport, Ayrshire, KA9 2RW Scotland; or British Aerospace, Inc., Librarian, Box 17414, Dulles International Airport, Washington, DC, 20041. This document may also be examined at the FAA, Central Region, Office of the Assistant Chief Counsel room 1558, 6001 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on September 13, 1991.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service

[FR Doc. 91-23450 Filed 9-27-91; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 799

[Docket No. 910925-1225]

Revisions to the Commerce Control List; Equipment Related to the Production of Chemical and Biological Weapons

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Proposed rule.

SUMMARY: The Bureau of Export Administration maintains the Commerce Control List (CCL), Supplement No. 1 to § 799.1 of the Export Administration Regulations (EAR). This rule proposed to amend the CCL by revising Export Control Classification Numbers (ECCNs) 1B70E, 1B71E, and 1C65E. These ECCNs control items that can be used in the production of chemical weapons precursors, chemical warfare agents, or biological weapons. Most of the changes proposed by this rule are intended to conform the U.S. chemical equipment list to the list being considered for adoption by countries participating in the Australia Group.

DATES: Comments must be received by October 30, 1991.

ADDRESSES: Written comments (six copies) should be sent to Willard Fisher, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: For questions on foreign policy controls, call Toni Jackson, Office of Technology and Policy Analysis, Bureau of Export Administration, Telephone: (202) 377-4531.

For questions of a technical nature on chemical weapon precursors, biological agents, and equipment that can be used to produce chemical and biological weapons agents, call James Seevaratnam, Office of Technology and Policy Analysis, Bureau of Export Administration, Telephone: (202) 377-5695

SUPPLEMENTARY INFORMATION:

Background

On March 13, 1991, the Bureau of Export Administration (BXA) published in the **Federal Register** an interim rule that imposed a validated licensing requirement on exports of certain dual-use equipment that can be used to produce: (a) Chemicals or biological agents controlled by ECCNs 1C60C and 1C61B (formerly ECCNs 4798B, 4997B, or 4998B) on the CCL, or (b) chemical or biological warfare agents controlled under the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120-130). Effective with the publication of that rule, such dual-use equipment required a validated license for export or reexport to Country Groups S and Z and to the regions and countries listed in Supplement No. 5 to part 778. The March 13, 1991, interim rule addressed some of the measures called for in President Bush's December 13, 1990, decision on the Enhanced Proliferation Control Initiative (EPCI) and included in Executive Order 12735 of November 16, 1990, on Chemical and Biological Weapons Proliferation.

The changes in this rule are being proposed after full consideration of the more than seventy-five comments that BXA has received on the March 13, 1991, interim rule and two other EPCI rules that were published on the same date. Twenty-three commenters criticized the fact that all three EPCI rules contained unilateral export controls. They felt that the costs and delays of the licensing process would hurt the competitiveness of U.S. companies vis-a-vis foreign producers and that the unilateral controls would prove ineffective due to the widespread foreign availability of the controlled items. Fourteen commenters argued that foreign availability makes the imposition of multilateral controls the only realistic approach. Three of these commenters suggested that a deadline be established for the creation of multilateral controls and that failure to meet the deadline should result in the termination of unilateral controls. The Department is sensitive to the arguments against unilateral controls and intends to reevaluate these controls annually. Among the factors that will be considered in deciding whether to maintain these controls will be whether comparable controls have been adopted multilaterally.

The vast majority of those who commented on the new ECCNs added by the March 13, 1991, interim rule felt that the technical parameters describing the commodities controlled by these ECCNs were too broad and caught a large number of commodities that had broad commercial applications (e.g., food processing, water treatment) and that were not essential for the production of chemical and biological weapons. Other commenters criticized the technical parameters of these ECCNs as being too vague for them to classify their products with any level of confidence.

At the May, 1991, meeting of the Australia Group, the United States sought the agreement of all Australia Group governments to adopt comparable controls on the chemical production equipment listed in the March 13 interim rule. The twenty-member Australia Group, in which the United States participates, seeks to prevent the proliferation of chemical and biological weapons. The delegates agreed, subject to approval by their governments, to establish a common control list for exports of dual-use chemical manufacturing equipment and technical data that is similar to the U.S. list. This proposed rule describes changes to the U.S. list published on March 13, 1991, that would conform the U.S. chemical equipment list to the list being considered for adoption by the Australia Group.

Concurrent with the consideration of the Australia Group's proposed equipment list by member governments, the U.S. is requesting comments on the changes that would conform the U.S. list to the proposed Australia Group list. Commerce is particularly interested in assessing the trade impact of these changes for exports to regions and countries listed in Supplement No. 5 to part 778.

The U.S. expects the Australia Group to discuss these matters and those related to biological weapons agents at

the December 1991 meeting of the Australia Group.

This rule also proposes to revise ECCNs 1B71E and 1C65E (formerly ECCNs 5165F and 5997F) to clarify the technical description of the controlled commodities and published in the March rule.

Specifically, ECCNs 1B70E, 1B71E, and 1C65E are proposed to be revised as follows:

ECCN 1B70E

(1) 1B70.a (formerly 5129F) currently controls reactor vessels with a capacity greater than 5 liters, storage tanks and containers with a capacity greater than 10 liters, and distillation columns with a capacity greater than 2 liters per hour. This rule proposes to revise 1B70.a to control batch reactor vessels having a total volume greater than 0.1 m^3 and less than 15 m^3, continuous reactor vessels with a production throughput greater than 1 kg./hr., storage tanks and containers with a total volume greater than 0.1 m^3, and distillation columns having a diameter greater than 1 m. ECCN 1B70.a would continue to control equipment lined with nickel or constructed of alloys with a nickel content greater than 40% by weight. In addition, ECCN 1B70.a would control equipment made from or lined with any of the following: Alloys with more than 25% nickel and 20% chromium by weight, glass, or graphite (for heat exchangers only).

(2) 1B70.b (formerly 5132F) currently controls any pumps or valves designed to be vapor leak proof. The entry would be revised to control only double seal, canned drive, magnetic drive, bellows, or diaphragm pumps that are made from or lined with any of the following: Nickel, alloys with more than 40% nickel by weight, alloys with more than 25% nickel and 20% chromium by weight, fluoropolymers, or tantalum. Valves would be controlled under 1B70.c.

(3) 1B70.c (formerly 5133F) currently controls chemical process sensors encased in nickel alloy having a nickel content greater than 40%. This rule proposes to revise 1B70.c to control bellows valves, diaphragm valves, or double-seal valves and multi-walled piping made from or lined with any of the following: Nickel, alloys with more than 40% nickel by weight, alloys with more than 25% nickel and 20% chromium by weight, or fluoropolymers.

(4) 1B70.d (formerly 5134F) currently controls filling equipment enclosed in a glove box or similar environmental barrier, or incorporating a nickel-lined or Hastelloy nozzle. This rule proposes to revise 1B70.d to control filling equipment made from or lined with any of the following: Nickel, alloys with more than 40% nickel by weight, or alloys with more than 25% nickel and 20% chromium by weight.

(5) 1B70.e (formerly 5135F) would be revised to further clarify which incinerators are of concern for chemical weapons production. This rule proposes to control incinerators that have an average combustion chamber temperature greater than 1000° C and a waste supply system lined with any of the following: Nickel, alloys with more than 40% nickel by weight, alloys with more than 25% nickel and 20% chromium by weight, or ceramics.

(6) 1B70.f (formerly 5140F) currently controls toxic gas monitoring systems (for detecting chemical warfare agents, chemical weapons precursors, and phosphorus, sulphur, or fluorine compounds) that are designed for continuous operation and are capable of detecting such chemicals at a concentration less than 0.1 milligrams per cubic meter of air. This entry would be revised to control systems capable of detecting such chemicals at a concentration less than 0.3 milligrams per cubic meter of air. In addition, 1B70.f would control toxic gas monitoring systems capable of detecting chemical compounds having an anticholinesterase function. These were previously covered under 1B70.g (formerly 5141F).

ECCN 1B71E

1B71.a (formerly 5165F) currently controls detection or assay systems that are capable of detecting concentrations of less than one part per million in air of biological agents or toxins controlled by ECCN 1C61B (formerly ECCNs 4997B and 4998B). This rule would clarify that 1B71.a controls only those systems designed to detect biological agents, spores, or toxins on a continuous basis.

ECCN 1C65E

This entry (formerly ECCN 5997F) would be revised to clarify that it controls only complex media specially formulated for the growth of microorganisms in Class 3 or Class 4.

Rulemaking Requirements

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

2. This rule involves collections of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These collections have been approved by the Office of Management and Budget under control numbers 0694–0005 and 0694–0010.

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

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

5. The provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a foreign and military affairs function of the United States. No other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

However, because of the importance of the issues raised by these regulations, this rule is issued in proposed form and comments will be considered in the development of final regulations. Accordingly, the Department encourages interested persons who wish to comment to do so at the earliest possible time to permit the fullest consideration of their views.

The period for submission of comments will close October 30, 1991. The Department will consider all comments received before the close of the comment period in developing final regulations. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. The Department will not accept public comments accompanied by a request that a part or all of the material be treated confidentiality because of its business proprietary nature or for any other reason. The Department will return such comments and materials to the person submitting the comments and will not consider them in the development of final regulations. All public comments on these regulations will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, the Department requires comments in written form. Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying. Communications from agencies of the United States Government or foreign governments will not be made available for public inspection.

The public record concerning these regulations will be maintained in the Bureau of Export Administration Freedom of Information Records Inspection Facility, room 4525, Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in part 4 of title 15 of the Code of Federal Regulations. Information about the inspection and copying of records at the facility may be obtained from Margaret Cornejo, Bureau of Export Administration Freedom of Information Officer, at the above address or by calling (202) 377–5653.

List of Subjects in 15 CFR Part 799

Exports, Reporting and recordkeeping requirements.

Accordingly, part 799 of the Export Administration Regulations (15 CFR parts 730–799) is proposed to be amended as follows:

PART 799—[AMENDED]

1. The authority citation for 15 CFR part 799 is revised to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended; Pub. L. 95–223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Pub. L. 95–242, 92 Stat. 141 (42 U.S.C. 2139(a)); E.O. 12058 of May 11, 1978 (43 FR 20947, May 16, 1978); E.O. 12214 of May 2, 1980 (45 FR 29783, May 6, 1980); E.O. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990); and E.O. 12735 of November 16, 1990 (55 FR 48587, November 20, 1990).

Supplement No. 1 to § 799.1 [Amended]

2. In Supplement No. 1 to § 799.1 (the Commerce Control List), Category 1 (Materials), ECCN 1B70E is revised to read as follows:

1B70E Equipment that can be used in the production of chemical weapons precursors and chemical warfare agents.

Requirements

Validated License Required: SZ, Supp. 5 to part 778 of this subchapter
Unit: Number
Reason for Control: CB
GLV: $0
GCT: No
GFW: No

List of Items Controlled

a. Chemical processing equipment described in paragraph a.1 having any of the characteristics described in paragraph a.2:

a.1 Chemical processing equipment, as follows:

a.1.a. Batch reactor vessels, with a total volume greater than 0.1 m^3 and less than 15 m^3;

a.1.b. Continuous reactor vessels with a production throughput greater than 1 kg/h;

a.1.c. Storage tanks and containers, with a total volume greater than 0.1 m^3;

a.1.d. Heat exchangers;

a.1.e. Distillation columns having a diameter greater than 1 m;

a.1.f. Condensers; or

a.1.g. Degassing equipment;

a.2 Made from or lined with any of the following materials:

a.2.a. Nickel;

a.2.b. Alloys with more than 40% nickel by weight;

a.2.c. Alloys with more than 25% nickel and 20% chromium by weight;

a.2.d. Glass; or

a.2.e. Graphite (for heat exchangers only).

b. Pumps described in paragraph b.1 having any of the characteristics described in paragraph b.2:

b.1. Pumps, as follows:

b.1.a. Double-seal pumps;

b.1.b. Canned drive pumps;

b.1.c. Magnetic drive pumps;

b.1.d. Bellow pumps; *or*

b.1.e. Diaphragm pumps;

b.2. In which the part that comes in contact with the fluids is made from or lined with any of the following materials:

b.2.a. Nickel;

b.2.b. Alloys with more than 40% nickel by weight;

b.2.c. Alloys with more than 25% nickel and 20% chromium by weight;

b.2.d. Fluoropolymers, including PTFE, PVDF, PFA; or

b.2.e. Tantalum.

c. Valves described in paragraph c.1 having any of the characteristics described in paragraph c.2:

c.1. Valves and multi-walled piping, as follows:

c.1.a. Bellows valves;

c.1.b. Diaphragm valves;

c.1.c. Double-seal valves; *or*

c.1.d. Multi-walled piping incorporating a leak detection port;

c.2. In which the part that comes in contact with the fluids is made from or lined with any of the following materials:

c.2.a. Nickel;

c.2.b. Alloys with more than 40% nickel by weight;

c.2.c. Alloys with more than 25% nickel and 20% chromium by weight; or

c.2.d. Fluoropolymers, including PTFE, PVDF, PFA.

d. Filling equipment in which the part that comes in contact with fluids is made from or lined with any of the following materials:

d.1. Nickel;

d.2. Alloys with more than 40% nickel by weight; or

d.3. Alloys with more than 25% nickel and 20% chromium by weight.

e. Incinerators, with an average combustion chamber temperature greater than 1,000 °C, in which the waste supply system is made from or lined with any of the following materials:

e.1. Nickel;

e.2. Alloys with more than 40% nickel by weight;

e.3. Alloys with more than 25% nickel and 20% chromium by weight; or

e.4. Ceramics.

f. Toxic gas monitoring systems having either of the following characteristics:

f.1. Capable of:

f.1.a. Detecting chemical warfare agents and chemical weapons precursors, as well as phosphorus, sulphur, fluorine, chlorine, and their compounds, at a concentration less than 0.3 milligrams per cubic meter of air; and

f.1.b. Continuous operation; or

f.2 Capable of detecting chemical compounds having an anticholinesterase function.

Supplement No. 1 to § 799.1 [Amended]

3. In Supplement No. 1 to § 799.1 (the Commerce Control List), Category 1 (Materials), ECCN 1B71E is revised to read as follows:

1B71E Equipment that can be used in the production of biological weapons.

Requirements

Validated License Required: SZ, Supp. 5 to part 778 of this subchapter
Unit: Number
Reason for Control: CB
GLV: $0
GCT: No
GFW: No

List of Items Controlled

a. Detection or assay systems, designed for continuous operation, that are capable of detecting concentrations of less than one part per million in air of biological agents, spores, or toxins controlled by ECCN 1C61.

b. Biohazard containment equipment, as follows:

b.1. Complete P3 or P4 level laboratory facilities;

b.2. Equipment that incorporates or is contained in a P3 or P4 containment housing.

c. Equipment for the microencapsulation of live microorganisms.

Supplement No. 1 to § 799.1 [Amended]

4. In Supplement No. 1 to § 799.1 (the Commerce Control List), Category 1 (Materials), ECCN 1C65E is revised to read as follows:

1C65E Complex media for the growth of microorganisms in Class 3 or Class 4 in quantities greater than 100 kilograms.

Note: Complex media is defined to be media that is specially formulated for growth of microorganisms in Class 3 or Class 4.

Requirements

Validated License Required: SZ, Supp. 5 to part 778 of this subchapter
Unit: $ value
Reason for Control: CB.
GLV: $0
GCT: No
GFW: No

Dated: September 24, 1991.

James M. LeMunyon,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 91-23382 Filed 9-27-91; 8:45 am]

BILLING CODE 3510-DT-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1952

North Carolina State Plan; Petition to Withdraw Federal Approval

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of petition to withdraw approval of the North Carolina State Plan.

SUMMARY: Pursuant to 29 CFR 1955.5, this notice publishes, for public comment, a petition filed by the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) asking the Occupational Safety and Health Administration (OSHA) to withdraw approval of the North Carolina occupational safety and health plan under section 18(e) of the Occupational Safety and Health Act. Public comment is sought specifically on AFL-CIO allegations and, in general, on the effectiveness of the State plan in assuring occupational safety and health protection to North Carolina workers. The comment period is 90 days.

DATES: Comments on the petition must be postmarked by December 30, 1991.

ADDRESSES: Four copies of written comments must be sent to the Docket Office, Docket No. T-24, U.S. Department of Labor, room N-2626, 200 Constitution Ave., NW., Washington, DC 20210 (Telephone: 202-523-7894). Comments of 10 or fewer pages in length may also be transmitted by facsimile to 202-523-5046 (FTS 523-5046), provided that the original and three copies of the comment are sent to the Docket Office thereafter.

FOR FURTHER INFORMATION CONTACT: James Foster, Director, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, room N-3647, 200 Constitution Avenue, NW., Washington, DC, (202) 523-8148.

SUPPLEMENTARY INFORMATION:

Part 1955 of title 29, Code of Federal Regulations, sets forth procedures under section 8 and 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 657, 667) (hereinafter referred to as the Act) for withdrawal of approval of State plans which have been approved under section 18(c) of the Act and 29 CFR part 1902. Section 1955.5 of title 29 provides that any interested person may petition the Assistant Secretary to initiate proceedings for the withdrawal of section 18(f) state plan approval under the Act. The petition shall set forth the grounds for initiating withdrawal proceedings, and include facts to support the petition. The Assistant Secretary may publish the petition for public comment. 29 CFR 1955.5.

The American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) wrote a letter to Assistant Secretary Scannell, dated September 11, 1991, in which it petitioned the Occupational Safety and Health Administration (OSHA) to withdraw approval of the North Carolina occupational safety and health plan under section 18(e) of the Occupational Safety and Health Act. The AFL-CIO stated that the North Carolina state plan "has failed to protect the safety and health of North Carolina workers" and asked OSHA to "promptly move to exercise concurrent jurisdiction in North Carolina."

In its petition, the AFL-CIO alleges that North Carolina is unable to fulfill its statutory obligation to provide effective health and safety protection to North Carolina workers. As an example, the AFL-CIO cited the recent tragic fire at the Imperial Food Products processing plant in Hamlet, North Carolina in which 25 workers died. The union states that North Carolina failed to inspect the Imperial Food plant, despite it being in the category of "high hazard" operations.

Generally, the AFL-CIO alleges that North Carolina failed to enforce and failed to provide adequate personnel to effectively implement its state occupational health and safety program. The union notes the lack of sufficient inspectors on staff and failure to perform the requisite number of inspections. Specifically, the petition states that North Carolina failed to meet benchmark staffing levels established in 1985 to have 50 safety inspectors and 27 health inspectors. Further, the petition states that North Carolina failed to meet requirements underlying their 1985 benchmarks to conduct safety inspections of high hazard manufacturing establishment every 2 years and to conduct health inspections of establishments in industries with significant health hazards every 3 years. Additionally, the union claims that North Carolina has failed to classify violations correctly, failed to collect a large percentage of penalties assessed for violations, and failed to pursue worker discrimination complaints in a timely manner.

As part of the consideration of the AFL-CIO petition for North Carolina plan withdrawal, public comment is being sought on the specific allegations and the performance of the State plan in general. Concurrently with the comment period, OSHA will conduct a comprehensive evaluation of the North Carolina state plan performance, and a decision to grant or deny the petition will thereafter be issued.

Availability of Petition and Public Comments for Inspection and Copying: A copy of the AFL-CIO petition and all public comments may be inspected and copied, during normal business hours at the following locations:

Docket Office, Docket No. T-24, U.S. Department of Labor—OSHA, 200 Constitution Avenue, NW.—room N2626, Washington, DC 20210, Telephone: (202) 523-7894.

Regional Office, U.S. Department of Labor—OSHA, 1375 Peachtree Street, NE.—suite 587, Atlanta, Georgia 30367, Telephone: (404) 347-3573.

Area Office, U.S. Department of Labor—OSHA, Century Station, 300 Fayetteville Mall—room 104, Raleigh, North Carolina 27601, Telephone: (919) 856-4770.

Signed at Washington, DC, this 24th day of September 1991.

Gerard F. Scannell,

Assistant Secretary of Labor.

[FR Doc. 91-23441 Filed 9-27-91; 8:45 am]

BILLING CODE 4510-26-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD5-91-033]

Drawbridge Operation Regulations; Beaufort Channel, Beaufort, North Carolina

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: At the request of the North Carolina Department of Transportation, the Coast Guard is considering changing the regulations that govern the operation of the U.S. 70 Bridge across Beaufort Channel, mile 0.1, in Beaufort, North Carolina, by extending existing seasonal restrictions on bridge openings year round. The proposed changes to these regulations are, to the extent practical and feasible, intended to provide for regularly scheduled drawbridge openings to help reduce motor vehicle traffic delays and congestion on the roads and highways linked by this drawbridge, while still providing for the reasonable needs of navigation.

DATES: Comments must be received on or before November 14, 1991.

ADDRESSES: Comments should be mailed to Commander (ob), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004. The comments and other materials referenced in this notice will be available for inspection and copying at that address. Normal office hours are between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Comments may be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, at (804) 398–6222.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written comments, data, or arguments. Persons submitting comments or data should include their names and addresses, identify the bridge, and give reasons for any recommended changes to this proposal. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope. The Commander, Fifth Coast Guard District, will evaluate all comments received before determining a final course of action on this proposal. The proposed regulation may be changed based on comments and data received. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this notice are Bill H. Brazier, Project Officer, and LT Monica L. Lombardi, Project Attorney, Fifth Coast Guard District.

Discussion of Proposed Regulations

The North Carolina Department of Transportation has requested that the existing regulations for the U.S. 70 Bridge across Beaufort Channel, mile 0.1, in Beaufort, North Carolina, be amended by extending the current summer season bridge opening schedule year round. The current regulation states the bridge shall open on signal every hour on the half hour from 7:30 a.m. to 7:30 p.m. beginning May 1 through October 31 for pleasure craft. If adopted, the Department of Transportation's request would have the Beaufort Channel Bridge open on signal for pleasure craft year-round from 7:30 a.m. to 7:30 p.m. every hour on the half hour, 7-days a week. This change has been requested due to a 52% increase in year-round draw openings of the bridge, and a 68% increase in year-round vehicular traffic across the bridge between 1984 to present. By providing for hourly openings on the half-hour on a year-round basis, vehicular traffic congestion on U.S. 70 will be reduced and highway safety will be increased. The existing provision that the bridge opens on signal for public vessels of the United States, state and local governments, commercial vessels and vessels in distress would remain unchanged.

The Coast Guard believes these proposed regulations will not unduly restrict vessel passage through the bridge.

Federalism Assessment

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

Regulatory Evaluation

This proposal is not major under Executive Order 12291 and not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a Regulatory Evaluation is unnecessary. This conclusion is based on the fact the proposed restrictions will not apply to commercial vessels. The Coast Guard will accept comments on this impact and will consider them when issuing the final rule.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the U.S. Coast Guard must consider whether proposed rules will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). The Coast Guard will accept comments on the economic impact on small entities, in connection with the proposal for permanent regulations, and consider them at that time.

Environmental Impact

This rulemaking has been thoroughly reviewed by the Coast Guard and it has been determined to be categorically excluded from further environmental documentation in accordance with section 2.b.2.g.(5) of Commandant Instruction M16475.1B. A Categorical Exclusion Determination is available in the rulemaking docket for inspection or copying where indicated under "ADDRESSES".

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 117 of title 33 Code of Federal Regulations as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

Authority: 33 U.S.C. 449; 49 CFR 1.46, 33 CFR 1.05.1(g).

2. Section 117.822 is amended by revising paragraph (a) to read as follows:

§ 117.822 Beaufort Channel, North Carolina.

(a) The draw shall open on signal every hour on the half hour from 7:30 a.m. to 7:30 p.m. for the passage of pleasure craft. To accommodate

approaching pleasure craft, hourly openings may be delayed up to 10 minutes past the half hour.

* * * * *

Dated: August 30, 1991.

W.T. Leland,

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

[FR Doc. 91-23342 Filed 9-27-91; 8:45 am]

BILLING CODE 4910-14-M

Federal Railroad Administration

49 CFR Parts 218 and 229

[Docket LI-7; Notice 4]

RIN 2130-AA53

Event Recorders

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Continuation of public hearing; postponement of due date for comments.

SUMMARY: On June 18, 1991 (56 FR 27931). FRA published a proposed rule to improve the safety of railroad operations and to enhance the quality of information available for post accident investigations by requiring event recorders on passenger trains and on fast, heavy freight trains. On August 14, 1991 (56 FR 40296) FRA published a notice stating that a hearing would be held September 12, 1991 and that comments would be due September 20, 1991. That hearing was held and, in order to allow additional witnesses to testify in this matter, FRA will reconvene the hearing on October 24, 1991. In order to allow persons interested in this proceeding to comment on any aspect of it, the due date for comments is postponed until October 31, 1991.

DATES:

(1) *Written Comments:* Written comments must be received by October 31, 1991.

(2) *Public Hearing:* A public hearing will be reconvened at 10 a.m. on October 24, 1991. Persons desiring to make an oral statement at the reconvened hearing should notify the Docket Clerk before October 22, 1991.

ADDRESSES:

(1) *Written Comments:* Address comments to the Docket Clerk, Office of Chief Counsel, RCC-30, Federal Railroad Administration, Department of Transportation, 400 Seventh Street, SW, room 8201, Washington, DC 20590. Comments should identify the docket and notice number and five copies should be submitted. Persons wishing to receive confirmation of the receipt of their comments should include a self-addressed stamped postcard. The Dockets Section is located in room 8201 of the Nassif Building, 400 Seventh Street, SW, Washington, DC 20590. Public dockets may be viewed between the hours of 8:30 am and 5:00 pm, Monday through Friday, except holidays.

(2) *Public Hearing:* The public hearing will be held in room 3200, Nassif Building, 400 Seventh Street, SW, Washington, DC 20590. Persons making statements at the hearing should provide five copies of their remarks at the hearing.

FOR FURTHER INFORMATION CONTACT: Phil Olekszyk, Deputy Associate Administrator for Safety, RRS-2, room 8320A, Federal Railroad Administration, Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590, telephone 202-366-0897 or Thomas A. Phemister, Office of Chief Counsel, Federal Railroad Administration, Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590 (telephone 202-366-0443).

SUPPLEMENTARY INFORMATION: On June 18, 1991, (56 FR 27931) FRA published a Notice of Proposed Rulemaking (NPRM) in this docket. That publication listed a public hearing on August 22, 1991, and on August 14, 1991, (56 FR 40296) FRA announced the postponement of that hearing until September 12, 1991. At the September 12, 1991, hearing it was announced that, following receipt of testimony from persons then present, the hearing would be reconvened on September 30, 1991, to hear oral presentations from additional persons not able to attend the September 12, 1991, hearing. Because it was impossible for several interested parties to avail themselves of the September 30 date and because FRA wants to hear testimony from all interested parties in this matter, the reconvened hearing will be held October 24, 1991.

It was also announced at the September 12 hearing that the due date for comments would be October 4, 1991; in order to allow interested persons time to comment on all aspects of this matter, the due date for written comments is continued until October 31, 1991.

Issued in Washington, DC, on September 25, 1991.

S. Mark Lindsey,

Chief Counsel, Federal Railroad Administration.

[FR Doc. 91-23601 Filed 9-26-91; 1:30 pm]

BILLING CODE 4910-06-M

INTERSTATE COMMERCE COMMISSION

49 CFR Chapter X

[Ex Parte No. 202 Redocketed as Ex Parte No. 505]

Transition To The Metric System

AGENCY: Interstate Commerce Commission.

ACTION: Advance notice of proposed rulemaking; change of docket number.

SUMMARY: On August 15, 1991 an advance notice of proposed rulemaking was published at 56 FR 40592 which requested comments on establishing policy and procedures to pursue and promote conversion to the metric system. The comment deadline was extended until December 16, 1991 by notice published at 56 FR 46145 (Sept. 10, 1991). Through this notice the Commission is notifying the public that the Commission's docket number in the proceeding has been changed to Ex Parte No. 505 and requesting that the new docket number be used for comments or any other submissions in this proceeding.

FOR FURTHER INFORMATION CONTACT: Lee Gardner (202) 275-7692, [TDD for hearing impaired: [(202) 275-1721].

Authority: 15 U.S.C. 205b: 49 10321(a), 11142, 11144, 11145, and 11163, and 5 U.S.C. 552 and 559. Decided: September 23, 1991.

By the Commission, Sidney L. Strickland, Jr.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-23469 Filed 9-27-91; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB73

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for Arenaria paludicola (Marsh Sandwort) and Rorippa gambellii (Gambel's Watercress)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes endangered status pursuant to the Endangered Species Act of 1973, as amended (Act), for *Arenaria paludicola* (marsh sandwort) and *Rorippa gambellii*

(Gambel's watercress). Both plants inhabitat freshwater marshes along the coast of San Luis Obispo and Santa Barbara Counties, California. Historically, marsh sandwort once ranged from the State of Washington to San Bernardino County in southern California. Gambel's watercress once ranged along the California coast from San Luis Obispo to San Diego Counties, and has also been found in the Valley of Mexico near Mexico City. The coastal wetland habitats where these two plants occurred have decreased in number and are currently threatened primarily by urban development. This proposal, if made final, would implement the protections provided by the Act. The Service requests comments and data from the public on this proposal.

DATES: Comments from all interested parties must be received by November 29, 1991. Public hearing requests must be received by November 14, 1991.

ADDRESSES: Comments and materials concerning this proposal should be sent to Office Supervisor, U.S. Fish and Wildlife Service, Southern California Field Station, Ventura Office, 2140 Eastman Avenue, suite 100, Ventura, California, 93003. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Dr. Steven Chambers, Office Supervisor, at the above address, or at 805–644–1766 (commercial) or 983–6040 (FTS).

SUPPLEMENTARY INFORMATION:

Background

Arenaria paludicola and *Rorippa gambellii* are both historically known from swamps and freshwater marsh habitats primarily along the Pacific Coast from Washington to California. Such wetland habitats have been vanishing in California at a rapid rate due primarily to urbanization.

Arenaria paludicola (marsh sandwort) was first described by A. Kellogg in 1863 under the name *Alsine palustre*, based on a specimen collected near Fort Point, San Francisco (Kellogg 1863). In 1876, S. Watson made the new combination *Arenaria palustris*, not realizing that the name had been published by Gay in 1845 in reference to a different species (Abrams 1944). Robinson noticed the duplication of names and, in his treatment of Alsineae (one of three tribes recognized within Caryophyllaceae at the time), renamed the plant *Arenaria paludicola* (Robinson 1894).

This slender perennial herb of the pink family (Caryophyllaceae) roots at the nodes of procumbent stems. The species bears small inconspicuous flowers from May through August. The singularly borne flowers in the axils of narrow opposite leaves and the smooth and angled stem separate this species from others in the genus. Historically, the species was known from four counties of coastal California as well as in the State of Washington. The Service contracted with the Natural Heritage Program in the State of Washington to conduct a status survey for marsh sandwort in that state. A full report is due later this year. However, Heritage Program staff have indicated that a review of historical specimens revealed that all but one of the specimens had been misidentified. Field surveys conducted in 1990 focused on the area from which the one historical specimen was located, as well as from other potential sites along the coast of Washington. No extant sites of marsh sandwort were found as a result of the surveys (J. Gamon, Washington State Natural Heritage Program, pers. comm.). In California, historical locations were known from the Counties of San Francisco, Santa Cruz, San Luis Obispo, and San Bernardino. These populations have been eliminated due to urbanization and associated impacts such as encroachment by nonnative plants and off-road vehicle activity. The only known extant location is in a small marshy area of Black Lake Canyon in San Luis Obispo County. This population was first reported in 1947 and rediscovered in 1984. In a 1988 survey by Myers, only 10 plants were found at the site (Morey 1990).

Rorippa gambellii (Gambel's watercress) was first described by S. Watson as *Cardamine gambellii* in 1876 using specimens collected by Gambel near Santa Barbara, Santa Barbara County. O.E. Schulz placed the plant in the genus *Nasturtium* in 1933. However, Munz chose to recognize the placement of the taxon in the former genus in his publication on California flora (Munz 1959). Recent work by Al-Shehbaz and Rollins (1988) pointed out the inconsistency in the features historically used to distinguish the genera *Cardamine* and *Rorippa*, including flower color, presence of median nectaries, and seed coat pattern. They consequently subsume several species of *Cardamine* into *Rorippa*, including *Rorippa gambellii*.

Rorippa gambellii, a member of the mustard family (Brassicaceae), is an herbaceous perennial that characteristically roots from the stem nodes of a horizontal rootstock. The species produces dense inflorescences of white flowers from April through June. The narrow fruits with seeds arranged in one row (rather than two) and the more angular and sharply toothed leaflets distinguish this species from the more common *Rorippa nasturtium-aquaticum*. The species was reported historically from about a dozen locations in southern California and from near Mexico City in the Valley of Mexico. Populations in the Counties of San Bernardino and San Diego have been extirpated due to habitat alteration. A population from Barka Slough on Vandenberg Air Force Base, Santa Barbara County, was seen as recently as 1980. However, surveys by Price (1989) were unsuccessful in relocating it. In San Luis Obispo County, populations near Small Twin Lake and Oceano Beach have been extirpated. The three known extant populations of *Rorippa gambellii* occur in San Luis Obispo County at Black Lake Canyon, Oso Flaco Lake, and Little Oso Flaco Lake. These three sites are within four aerial miles of each other. The total number of individuals counted during surveys in 1989 resulted in a total count of less than 1,000 individuals (Wickenheiser and Morey 1990).

Federal government actions on *Arenaria paludicola* began as a result of section 12 of the Endangered Species Act of 1973, which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct in the United States. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975.

The Service published a notice in the July 1, 1975, **Federal Register** (40 FR 27823) of its acceptance of the report of the Smithsonian Institution as a petition within the context of section 4(c)(2) (now section 4(b)(3)) of the Act and its intention thereby to review the status of the plant taxa named therein. On June 16, 1976, the Service published a proposal in the **Federal Register** (42 FR 24523) to determine approximately 1,700 vascular plant species to be endangered species pursuant to section 4 of the Act. *Arenaria paludicola* was included in the July 1, 1975, **Federal Register** document as a threatened species. General comments received in response to the 1976 proposal were summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909). The Endangered Species Act Amendments of 1978 required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to those proposals already more than 2 years old. In the December 10, 1979, **Federal Register** (44 FR 70796), the Service published a notice

of withdrawal of the June 6, 1976, proposal, along with four other proposals that had expired.

The Service published an updated notice of review for plants on December 15, 1980 (45 FR 82480). This notice included *Rorippa gambellii* as a Category 1 species and *Arenaria paludicola* as a Category 2 species. Category 1 species are those taxa for which the Service has in its possession enough information on biological vulnerability and threats to support a proposal to list, while Category 2 species are those for which data in the Service's possession indicate listing is possibly appropriate, but for which substantial data on biological vulnerability and threats are not currently known or on file to support proposed rules. On November 28, 1983, the Service published in the **Federal Register** a supplement to the Notice of Review (48 FR 53640); the plant notice was again revised on September 27, 1985 (50 FR 39526). *Arenaria paludicola* and *Rorippa gambellii* were included in both of these revisions as Category 2 species. On February 21, 1990, (55 FR 6184) the plant notice was again revised, and *Arenaria paludicola* and *Rorippa gambellii* were both included as Category 1 species.

Section 4(b)(3)(B) of the Act requires the Secretary to make certain findings on pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This was the case for *Arenaria paludicola*, because the 1975 Smithsonian report had been accepted as a petition. In October of 1983, 1984, 1985, 1986, 1987, 1988, 1989, and 1990, the Service found that the petitioned listing of *Arenaria paludicola* was warranted but precluded by other higher priority listing actions. Publication of this proposal constitutes the final finding for the petitioned action.

Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act (16 U.S.C. 1533) and regulations (50 CFR part 424) promulgated to implement the 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 *Arenaria paludicola* Rob. (marsh sandwort) and *Rorippa gambellii* (S. Wats.) Roll. & Al-Shehbaz (Gambel's watercress) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

The only known occurrence of *Arenaria paludicola* is threatened with habitat modification by the proposed drilling of water wells associated with a proposed housing development. In addition, a series of below-average rainfall years has dropped the base flow within Black Lake Canyon, which may already have altered the hydrological regime for the plant. One occurrence of *Rorippa gambellii* co-occurs with *Arenaria paludicola* at Black Lake Canyon and is threatened by the same alteration of hydrologic regime. The occurrence of *Rorippa gambellii* at Oso Flaco Lake is threatened with the modification of habitat due to encroachment of sand from adjacent dunes. Efforts to revegetate dunes that had been previously denuded by off-road vehicle activity have been marginally successful (Wickenheiser 1989). At Little Oso Flaco Lake, the occurrence of *Rorippa gambellii* is threatened by the lack of a permanent water source. This site's water source is made available in part by agricultural activities in adjacent farmlands. Thus the water level at this site regularly fluctuates.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Although these species are not presently sought after by collectors, they are vulnerable to taking, owing especially to their limited distribution. The increased public attention that may be brought to bear as a result of this proposal could potentially increase the desirability of these species, thereby increasing the threat of collection.

C. Disease or Predation

Not known to be applicable.

D. The Inadequacy of Existing Regulatory Mechanisms

Under the Native Plant Protection Act (chapter 1.5 S 1900 *et seq.* of the Fish and Game code) and California Endangered Species Act (chapter 1.5 S 2050 *et seq.*), the California Fish and Game Commission has listed *Arenaria paludicola* as endangered and *Rorippa gambellii* as threatened (14 California Code of Regulations S 670.2). Though both statutes prohibit the "take" of State-listed plants (chapter 1.5 S 1908 and S 2080), State law appears to exempt the taking of such plants via habitat modification or land use change by the landowner. After the California Department of Fish and Game notifies a landowner that a State-listed plant grows on his or her property, State law requires only that the landowner notify the agency "at least 10 days in advance of changing the land use to allow salvage of such plant" (chapter 1.5 S 1913).

The County of San Luis Obispo has designated a portion of Black Lake Canyon as a Sensitive Resource Area (SRA), thereby restricting land use in the area. However, the boundaries of such SRAs may be altered by amending the County General Plan.

E. Other Natural or Manmade Factors Affecting its Continued Existence

Eucalyptus trees were planted at Black Lake Canyon several decades ago. These non-native trees are altering the habitat of *Arenaria paludicola* by increasing the amount of shade, reducing the local water availability, and possibly introducing organic compounds that inhibit growth of other species into the surrounding substrate. Because of the limited distribution of both species, *Arenaria paludicola* and *Rorippa gambellii* are both subject to stochastic extinction: Extinction due to random events such as flood, drought, disease, or predation.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Arenaria paludicola* Rob. (marsh sandwort) and *Rorippa gambellii* (S. Wats.) Roll & Al-Shehbaz (Gambel's watercress) as endangered, because of their limited distribution, loss of freshwater marsh habitat due to changes in the hydrological regime, competition from non-native species, and encroachment of sand from adjacent coastal dunes.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat concurrently with determining a species to be endangered or threatened. The Service finds that designation of critical habitat is not presently prudent for these species. Such a determination would result in no known benefit to the species. The publication of legal descriptions and maps necessary in a proposal to designate critical habitat would highlight the locations of these plants, and might result in increased threats of vandalism or take. All involved parties and principal landowners have been notified of the

location and importance of protecting these species' habitat. Protection of these species' habitat will be addressed through the recovery process and through the section 7 consultation process. Therefore, it would not now be prudent to determine critical habitat for *Arenaria paludicola* and *Rorippa gambellii*.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. Federal agencies that may affect these two plants through activities they fund, authorize, or carry out include the Federal Highway Administration, the Federal Housing Administration, and the Corps of Engineers through section 404 of the Clean Water Act permitting authority.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 for endangered species set forth a series of general prohibitions and exceptions that apply to all endangered plants. With respect to *Arenaria paludicola* and *Rorippa gambellii*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. These prohibitions, in part, make it illegal with respect to any endangered plant for any person subject to the jurisdiction of the United States to import or export; transport in interstate or foreign commerce in the course of a commercial activity; sell or offer for sale in interstate or foreign commerce; remove and reduce to possession any such species from areas under Federal jurisdiction; maliciously damage or destroy any such plants on any area under Federal jurisdiction; or to remove, cut, dig up, damage, or destroy any such species on any other area in knowing violation of any State law or regulation or in the course of any violation of a State criminal trespass law. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances.

It is anticipated that few trade permits would ever be sought or issued because the species are not common in cultivation or in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, room 432, 4401 N. Fairfax Drive, Arlington, Virginia 22203 (703/358–2104, FTS 921–2104).

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 these species;

(2) The location of any additional populations of these species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of these species; and

(4) Current or planned activities in the subject area and their possible impacts on these species.

Any final decision on this proposal concerning these two species of plants 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 Supervisor (see ADDRESSES section).

National Environmental Policy Act

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

References Cited

Abrams, L. 1944. Illustrated flora of the Pacific States, Vol. II. Stanford University Press.

Al-Shehbaz, I.A., and R.C. Rollins. 1988. A reconsideration of *Cardamine curvisiliqua* and *C. gambellii* as species of *Rorippa* (Cruciferae). Journal of the Arnold Arboretum 69:65–71.

Kellogg, A. 1863. Description of a new species of Alsine. Proceedings of the California Academy of Natural Sciences 3:61.

Morey, S.C. 1990. A management strategy for the recovery of marsh sandwort (*Arenaria paludicola*), Endangered Plant Program, Natural Heritage Division. State of California Department of Fish and Game. 14 pp.

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Price, R.A. 1989. Field studies on *Rorippa gambellii*. Report submitted to the Endangered Plant Program, Natural Heritage Division, California Department of Fish and Game. 6 pp.

Robinson, B.L. 1894. contributions of the Gray Herbarium of Harvard University, new series, no. VI: The North American Alsineae. Proceedings of the American Adademy of Sciences 29:298.

Wickenheiser, L.P. 1989. Report to the Fish and Game Commission on the status of Gambel's watercress (*Rorippa gambellii*). Natural Heritage Division, Status Report 89–27. 18 pp.

Wickenheiser, L.P. and S.C. Morey. 1990. A management strategy for the recovery of Gambel's watercress (*Rorippa gambellii*). State of California Department of Fish and Game, Endangered Plant Program, Natural Heritage Division. 19 pp.

Author

The primary author of this proposed rule is Ms. Constance Rutherford, southern California Field Station, Ventura Office, U.S. Fish and Wildlife Service, 2140 Eastman Avenue, suite 100, Ventura, California 93003 (805/644–1766, or FTS 983–6040).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulations 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 plant families indicated, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
*	*	*	*	*	*	
Brassicaceae—Mustard family:						
*	*	*	*	*	*	
Rorippa gambelli	Gambel's watercress	U.S.A. (CA)	E		NA	NA
*	*	*	*	*	*	
Caryophyllaceae—Pink family:						
*	*	*	*	*	*	
Arenaria paludicola	Marsh sandwort	U.S.A. (CA)	E		NA	NA
*	*	*	*	*	*	

Dated: September 20, 1991.

Bruce Blanchard,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 91–23463 Filed 9–27–91; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 56, No. 189
Monday, September 30, 1991

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

Animal and Plant Health Inspection Service

[Docket 91-115]

Pseudorabies in Swine; Approved Testing Laboratories

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the regulations governing the interstate movement of swine because of pseudorabies, approved differential pseudorabies tests may be conducted only in laboratories approved by the Administrator. This notice states that the Pseudorabies Virus gpI Antibody Test Kit (HerdChek®) is a differential psuedorabies test approved for use with Boehringer Ingelheim and Norden gpI deleted pseudorabies vaccines, and lists the laboratories that have been approved to conduct the test.

FOR FURTHER INFORMATION CONTACT: Dr. William Stewart, Chief Staff Officer, Swine Diseases Staff, VS, APHIS, USDA, room 735, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–7767.

SUPPLEMENTARY INFORMATION: The regulations governing the interstate movement of swine because of pseudorabies (9 CFR part 85) include provisions for using approved differential pseudorabies tests for determining the disease status of herds of swine. The regulations state that approved differential pseudorabies tests may be conducted only in a laboratory approved by the Administrator. The regulations further state that a laboratory approved to conduct these tests will be listed in a notice published in the **Federal Register**.

Accordingly, this document provides notice that the Pseudorabies Virus gpI Antibody Test Kit (HerdChek®) is a differential pseudorabies test approved for use with Boehringer Ingelheim and Norden gpI deleted pseudorabies vaccines, and that the following laboratories are approved by the Administrator to conduct the test:

State	Laboratory
Illinois	Animal Disease Laboratory, Illinois Department of Agriculture, Centralia, IL.
Indiana	Purdue Animal Disease Laboratory, West Lafayette, IN.
Iowa	Iowa State University, Veterinary Diagnostic Laboratory, Ames, IA.
Michigan	Michigan Department of Agriculture, Laboratory Division, East Lansing, MI.
Nebraska	Department of Veterinary Science, University of Nebraska, Lincoln, NE.
North Carolina	Rollins Animal Disease Diagnostic Laboratory, Raleigh, NC.

Authority: 21 U.S.C. 111, 112, 113, 115, 117, 120, 121, 123–126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

Done in Washington, DC, this 25th day of September 1991.

Robert Melland,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91–23446 Filed 9–27–91; 8:45 am]

BILLING CODE 3410–34–M

Forest Service

Program To Collect Pacific Yew on Certain Federal Lands for Cancer Research

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service, USDA, will prepare an environmental impact statement (EIS) for the remainder of a 5 year program to harvest Pacific yew (*Taxus brevifolia*) to National Forests lands. The Bureau of Land Management (BLM), U.S. Department of Interior, will be invited to participate as a cooperating agency.

FOR FURTHER INFORMATION CONTACT: Fred Page, Regional Coordinator, Pacific Northwest Region, 319 SW Pine Street, (P.O. Box 3623), Portland, Oregon 97208–3623, Ph (503) 326–3538.

SUPPLEMENTARY INFORMATION: The Northern, Pacific Northwest, Pacific Southwest Regions of the Forest Service and Bureau of Land Management in the State of Oregon propose to harvest Pacific Yew on the federal lands where it grows. Taxol from the Pacific yew is the only approved source of taxol, a promising anticancer agent that is being developed pursuant to a Cooperative Research and Development Agreement (CRADA) between Bristol-Myers Squibb and the National Cancer Institute (NCI). Taxol is needed for clinical trials on patients with ovarian and other types of cancers.

The only current source of taxol for clinical trials is the bark of the Pacific yew. In order to provide enough material for ongoing clinical trials and begin to provide the drug on a compassionate basis for ovarian cancer patients the 1991 goal for dried bark from public lands was 750,000 pounds. This would yield about 25 kilograms of pure drug, or enough for about 12,000 patients. However, if results of the clinical studies continue to be as promising as they are at present, the needs in future years could increase significantly. The Agreement between Bristol-Myers Squibb and NCI requires that the company investigate alternative sources of the drug. NCI is also supporting research on methods of procuring and/or producing taxol through synthetic means as well as through plant tissue culture, horticultural approaches, and others.

Because taxol is urgently needed for cancer research, the Secretaries of Agriculture, the Interior, and Health and Human Services have entered into a Memorandum of Understanding (MOU) to use their best efforts, consistent with applicable laws and policy to assist in obtaining the raw material needed to produce taxol.

A large quantity of Pacific yew is expected to be harvested from public lands administered by the Forest Service and BLM in the states of Oregon, Washington, and Idaho. Minor amounts may be harvested from public lands in Montana and California.

Models developed for a Pacific Northwest Region Pacific yew inventory estimate the percentage of land on six National Forests on the west slope of

the Cascade Mountain Range that contain suitable Pacific yew habitat. The amount of habitat varies from 31 percent of the forest land area on the Umpqua National Forest to southern Oregon to 5 percent of the Mount Baker-Snoqualmie National Forest in Washington state. The Willamette, Mt. Hood and Rogue River National Forests in Oregon are estimated to have 19 percent, 18 percent and 19 percent respectively. An estimated 18 percent of the Gifford Pinchot National Forest in southern State of Washington is capable of producing suitable Pacific yew habitat. In the Northern Region of the Forest Service, Pacific yew is abundant on approximately 100,000 acres of land in the South Fork of the Clearwater River drainage in Idaho. Yew is scattered on other National Forests lands in the panhandle of Idaho and in northwestern Montana.

Pursuant to the MOU, the Forest Service and the BLM have each entered into Cooperative Agreements (Agreements) with Bristol-Myers Squibb. As provided for in these Agreements, both agencies are collecting, developing, and interpreting information regarding the range, distribution, biology, and ecology of Pacific yew. A first set of Conservation Biology Guides is currently being developed. The guides are needed first, to provide for adequate regeneration of the species in appropriate plant communities; second, to insure maintenance of adequate genetic viability of the species; and third, to insure its ecological function is maintained in the plant communities where it exists. The Forest Service is also initiating a conservation biology research program to provide information to help further refine these guides.

Under terms of the Agreement, the agencies provide Pacific yew to Bristol-Myers Squibb. Currently, the primary source of taxol is from Pacific yew bark. However, as technology changes material such as needles may become the source of taxol.

The current harvest is proceeding under site-specific environmental analyses and, for the most part, this harvest has been located in timber sales of other commercial species. Future Pacific yew harvests will continue to be covered by site-specific environmental analyses.

The EIS will use existing information, as well as information currently being developed, to establish a program for providing Pacific yew for cancer research and establish applicable biological and ecological guides.

The BLM and NCI will be invited to participate as cooperating agencies with jurisdiction by law in the development of the program. Other agencies with special expertise will also be invited to cooperate.

The EIS will consider a range of alternatives, based on the issues and concerns associated with the project. One alternative that will be considered is the no action alternative. Other alternatives may consist of modifications or changes in the various elements comprising the proposal.

Scoping will begin in October, 1991. The Forest Service will be seeking additional information, comments and assistance from Federal, State and local agencies and other individuals or organizations who may be interested or affected by the proposed project. Additional input will be used to help identify key issues and develop alternatives. This input will be used in preparation of the draft EIS. The scoping process includes:

1. Identification of potential issues;
2. Identification of issues to be analyzed in depth;
3. Elimination of insignificant issues or those which have been covered by a relevant previous environmental process;
4. Exploration of additional alternatives based on the issues identified during the scoping process; and
5. Identification of potential environmental effects of the proposed action and alternatives (i.e. direct, indirect, and cumulative effects and connected actions).

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and available for public review by June 1992. At that time, the EIS will be distributed to interested and affected agencies, organizations, and members of the public. EPA will publish a notice of availability of the draft EIS in the **Federal Register**. The comment period on the draft EIS will be 45 days from the date the EPA publishes the notice of availability in the **Federal Register**.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, a reviewer of a draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts *City of Angoon* v. *Hodel*, 803 f. 2d 1016, 1022 (9th Cir, 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objectives are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.).

The final EIS is scheduled to be completed by October 1992. In the final EIS, the Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making the decision regarding this proposal. The Regional Forester, Pacific Northwest Region is the responsible official. The responsible official will document the decision and rationale for the decision in the Record of Decision. That decision will be subject to Forest Service appeal Regulations (36 CFR 217).

Dated: September 24, 1991.

John F. Butruille,

Regional Forester.

[FR Doc. 91-23508 Filed 9-27-91; 8:45 am]

BILLING CODE 3410-11-M

Grouse Creek Timber Sale, Rogue River National Forest, Jackson County, Oregon

AGENCY: Forest Service, USDA.

ACTION: Cancellation of an environmental impact statement.

SUMMARY: The Forest Supervisor of the Rogue River National Forest has vacated the decision to prepare an environmental impact statement on a

proposal to harvest timber and construct roads in the Grouse Creek Planning Area, located within a portion of the Kinney Creek Roadless Area. New information from additional resource investigations have required the reevaluation of the decision to proceed with the Grouse Creek Timber Sale.

The Grouse Creek Planning Area is located in portions of sections 22–23, 25–27, and 34–36, T. 40 S., R. 4 W, and sections 2–3, & 10, T. 41 S., R 4 W., Willamette Meridian, within Jackson County, Oregon.

The Grouse Creek Timber Sale Notice of Intent, published in the May 16, 1991 **Federal Register** (45 FR 54386), is hereby rescinded.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this cancellation to Thomas W. Lavagnino, Resource Planner, Applegate Ranger District, 6941 Upper Applegate Road, Jacksonville, Oregon 97530: phone (503) 899–1812.

Dated: September 18, 1991.

James T. Gladen,

Forest Supervisor.

[FR Doc. 91–23506 Filed 9–27–91; 8:45 am]

BILLING CODE 3410–11–M

Rusty Timber Sale and Other Projects, Rogue River National Forest, Jackson and Josephine Counties, Oregon

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare environmental impact statement.

SUMMARY: The USDA, Forest Service will prepare an Environmental Impact Statement on a proposal to harvest timber, construct and reconstruct roads and trails, and other projects in a portion of the Kangaroo Roadless Area. The proposed Rusty Timber Sale and Other Projects EIS will tier to the final EIS for the Land and Resource Management Plan (Forest Plan) for the Rogue River National Forest. The Record of Decision was signed on July 20, 1990 by John F. Butruille, Regional Forester, Pacific Northwest Region. The proposed projects will be in compliance with the direction in the Forest Plan which provide overall guidance for management of the area and the proposed projects. The proposed projects are planned for implementation in Fiscal Years 1992–1995 on the Applegate Ranger District.

The Rusty Planning Area consists of approximately 5200 acres of National Forest Land located on Steves Peak, 25 air miles southwest of Medford, Oregon.

The Applegate Ranger District invites written comments and suggestions on the scope of the analysis to add to comments already received as a result of local public participation activities. The district will also provide, as needed, notice of the full environmental analysis and decision-making process that will occur on the proposal so that interested and affected people are aware of how they may participate and contribute to the final decision.

DATES: Comments concerning the scope of the analysis should be received in writing by November 1, 1991.

ADDRESSES: Send written comments to Susan E. Rolle, District Ranger, Applegate Ranger District, 6941 Upper Applegate Road, Jacksonville, Oregon 97530.

FOR FURTHER INFORMATION CONTACT: John Fertig, Resource Planner, Applegate Ranger District, 6941 Upper Applegate Road, Jacksonville, Oregon 97530 (503) 899–1812.

SUPPLEMENTARY INFORMATION: The proposal is to harvest approximately 5 MMBF of timber on 278 acres using several silvicultural prescriptions and logging systems; to construct and reconstruct six miles of road; to burn stands of Baker's Cypress to enhance regeneration of this fire dependent species; to burn brush fields to reduce fire hazard and increase wildlife use; to install a variety of erosion control measures to reduce erosion from old mining sites and to install fish habitat structures in streams. The proposed timber sale (called Iron Mountain) is listed in Appendix A of the Forest Plan (10 Year Activity Schedules). The other projects in this proposal were developed in the Joey Integrated Resource Analysis, 1991.

The proposed timber sale with associated activities is in an inventoried roadless area. This area was recommended as a Non-Wilderness in the 1979 FEIS for the Roadless Area Review and Evaluation (RARE II). The FEIS for the Forest Plan analyzed the area for its roadless characteristic and allocated the land as shown in the table below.

The following table lists the approximate percentages allocated to the specific management Areas (MA) by the Forest Plan:

Management area	Percent of planning area
1—Minimum Management	37
7—Foreground Partial Retention	1
14—Big Game Winter Range	19
15—Old Growth	3
19—Spotted Owl Habitat	4
20—Timber Suited 1	25
25—Timber Suited 2	1
26—Restricted Riparian	9

The Forest Plan has divided the Forest into Management Areas, each with an accompanying Management Strategy. Each area has different resource goals, opportunities, standards and guidelines. A complete description of each Management Strategy can be found in Chapter Four of the Forest Plan.

The analysis will consider a range of alternatives. Along with the proposed action, the analysis will consider a no-action alternative. Action alternatives will analyze high priority silvicultural stands that can be accessed with or without roads in areas determined suitable for timber management that are consistent with the Forest Plan and other management directions.

Other applicable plans, directions, or policies that will be followed for the Rusty Timber Sale and Other Projects EIS are:

- A Conservation Strategy for the Northern Spotted Owl. A report of the Interagency Scientific Committee to address the conservation of the northern spotted owl (ISC report), USDA Forest Service, Pacific Northwest and Pacific Southwest Regions, 1990.
- A Guide to Conducting Vegetation Management Projects in the Pacific Northwest Region, also known as the Mediated Agreement between the Northwest Coalition for Alternatives to Pesticides, et al, vs. Richard Lyng, Secretary, United States Department of Agriculture, et. al, 1990.

The legal description for the Rusty Planning Area is: All or portions of Sections 13–15, 22, 23, 26, 27, 34, and 35, Township 40 South, Range 5 West and Sections 18, 19, and 30, Township 40 South, Range 4 West, Willamette Meridian, Jackson and Josephine Counties, Oregon.

Public participation will be especially important at several points during the analysis, beginning with the scoping process (40 CFR 1501.7). The Forest Service will be seeking information, written comments, and assistance from Federal, State, local agencies and other individuals or organizations who may be interested in or affected by the proposed project. Public scoping has begun. Letters have been sent to adjacent landowners and other interested parties encouraging their participation. Between January, 1991 and May, 1991 four public meetings were held where this proposal

was presented along with other proposals elsewhere on the District. This input will be used in preparation of the draft EIS. The scoping process includes:

1. Identifying major issues to be analyzed in depth;

2. Exploring additional alternatives (that are consistent with the Forest Plan) derived from issues recognized during scoping activities;

3. Notifying interested publics of opportunities to participate through meetings, personal contacts, or written comment. Keeping the public informed through the media and/or written material (i.e., newsletters, correspondence, letters, and maps posted on local bulletin boards, etc.).

The following preliminary issues have been identified:

- Changing the character of the Kangaroo Roadless area;
- Using "New Perspectives" silvicultural prescriptions and reducing the amount of clearcutting;
- Reduction of the Northern Spotted Owl (*Strix occidentalis caurina*) and/or Old Growth habitat;
- Balancing the risks associated with prescribed burning with the need to re-introduce fire into this ecosystem and the reduction in the risk of a catastrophic wildfire;
- Management of hardwoods in the planning area;
- Management of Pacific Yew (*Taxus brevifolia*) in the Planning Area;
- Opportunity to create trails for use by motorized bikes and the opportunity to reclaim abandoned trails outside of wilderness areas.

The USDA Forest Service, Pacific Northwest Region, Rogue River National Forest is the Lead Agency for this project. The responsible official is James T. Gladen, Forest Supervisor, Rogue River National Forest, PO Box 520, Medford, Oregon 97501. The responsible official will decide which, if any of the proposed alternatives will be implemented and will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to Forest Service Appeal Regulations (36 CFR 217).

The draft EIS is scheduled to be filed in January, 1992 and the final EIS in May, 1992.

The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the Notice of Availability in the **Federal Register**.

The Forest Service believes it to be important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could have been raised at the draft environmental impact stage but are not raised until after the completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d. 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.).

Dated: September 18, 1991.

James T. Gladen,

Forest Supervisor.

[FR Doc. 91-23507 Filed 9-27-91; 8:45 am]

BILLING CODE 3410-11-M

Packers and Stockyards Administration

Proposed Posting of Stockyards

The Packers and Stockyards Administration, United States Department of Agriculture, has information that the livestock markets named below are stockyards as defined in section 302 of the Packers and Stockyards Act (7 U.S.C. 202), and should be made subject to the provisions of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.*).

AL-185—Southern Star Stockyard, Inc., Rogersville, Alabama
AL-186—Wood's Livestock Market, Ohatchee, Alabama
DE-102—S & J Villari Livestock, Gumboro, Delaware
MN-188—Central Livestock Association, Inc., Albany, Minnesota
TX-341—Decatur Livestock Market, Inc., Decatur, Texas
WV-119—Moundsville Livestock Auction Co., Inc., Moundsville, West Virginia

Pursuant to the authority under section 302 of the Packers and Stockyards Act, notice is hereby given that it is proposed to designate the stockyards named above as posted stockyards subject to the provisions of said Act.

Any person who wishes to submit written data, views or arguments concerning the proposed designation may do so by filing them with the Director, Livestock Marketing Division, Packers and Stockyards Administration, room 3408-South Building, United States Department of Agriculture, Washington, DC 20250, by October 15, 1991.

All written submissions made pursuant to this notice will be made available for public inspection in the office of the Director of the Livestock Marketing Division during normal business hours.

Done at Washington, DC this 24th day of September, 1991.

Harold W. Davis,

Director, Livestock Marketing Division.

[FR Doc. 91-23473 Filed 9-27-91; 8:45 am]

BILLING CODE 3410-KD-M

COMMISSION ON CIVIL RIGHTS

Agenda and Public Meeting of the Florida Advisory Committee

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Florida Advisory Committee to the Commission will convene at 2 p.m. and adjourn at 5 p.m. on Tuesday, October 22, 1991, at the Courtyard by Marriott, 3805 W. Cypress, Tampa, Florida. The purpose of the meeting is to release the report, Police-Community Relations in Tampa—An Update; to conduct discussions regarding a follow-up to the report; and, to adopt program plans for FY 1992.

Persons desiring additional information, or planning a presentation to the Committee, should contact Florida Advisory Committee Chairperson, Bradford Brown (305) 361-4284 or Bobby D. Doctor, Director, Southern Regional Office (404) 730-2476, (TDD 404/730-

2481). Hearing impaired persons who will attend the meeting and require the service of a sign language interpreter, should contact the Southern Regional Office at least five (5) working days before the scheduled date of the meeting.

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

Dated at Washington, DC, September 23, 1991.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 91-23413 Filed 9-27-91; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance and 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: Distribution License Procedure.

Form Number: Agency—EAR § 773.3; OMB Control No. 0694-0015.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 19,002 respondents; 25,676 reporting/recordkeeping hours; Average time per respondent is 40 hrs. for new applicants and 20 hrs. for renewals.

Needs and Uses: The information collected under the Distribution License Procedure is used to determine if an exporter needs a Distribution License and if an exporter qualifies for the license. Additional information is used to confirm DL holders compliance with the requirements of the license.

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: Gary Waxman, 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 5327, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Gary Waxman, OMB Desk Officer, room 3208 New Executive Office Building, Washington, DC 20503.

Dated: September 24, 1991.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 91-23505 Filed 9-27-91; 8:45 am]

BILLING CODE 3510-CW-M

International Trade Administration

[A-357-007]

Carbon Steel Wire Rod From Argentina; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On July 11, 1991, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on carbon steel wire rod from Argentina. These final results of review cover one manufacturer/exporter, Acindar Industria Argentina de Aceros S.A. ("Acindar"), of this merchandise for the period November 1, 1989 through October 31, 1990. The review indicates that Acindar made no shipments of the subject merchandise during the review period.

We gave interested parties an opportunity to comment on the preliminary results. We did not receive any written comments. Based on our finding that Acindar made no shipments to the United States during the review period, we have set the margin at the rate of the final results of the last review period in which Acindar made shipments, which was zero percent.

EFFECTIVE DATE: September 30, 1991.

FOR FURTHER INFORMATION CONTACT: Robert Bolling or Alain Letort, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-3793 or telefax (202) 377-1388.

SUPPLEMENTARY INFORMATION:

Background

On July 11, 1991, the Department of Commerce ("the Department") published in the **Federal Register** (56 FR 31612) the preliminary results of its administrative review of the antidumping duty order on carbon steel wire rod from Argentina (49 FR 46180; November 23, 1984). The Department has now completed this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended ("the Act").

Scope of the Review

Imports covered by this review are shipments of carbon steel wire rod. This merchandise is currently classifiable under Harmonized Tariff Schedule ("HTS") item numbers 7213.20.00, 7213.31.30, 7213.39.00, 7213.41.30, 7213.49.00, and 7213.50.00. The HTS numbers are provided for convenience and customs purposes. The written product description remains dispositive.

Analysis of Comment Received

We gave interested parties an opportunity to comment on our preliminary results. We did not receive any comments.

Final Results of the Review

Based on our finding that Acindar made no shipments to the United States during the review period, we have set the margin at the rate of the final results of the last review period in which Acindar made shipments, which was zero percent.

As provided for in section 751(a)(1) of the Tariff Act, a cash deposit rate of zero percent will remain in effect for Acindar. The cash deposit rates for exporters covered in previous reviews remain unchanged. For any future entries of this merchandise from an exporter or manufacturer not covered in this or any previous review or the investigation, and who is unrelated to any reviewed firm, a cash deposit of zero percent shall be required. These deposit requirements are effective for all shipments of carbon steel wire rod from Argentina which are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.22 of the Commerce Department's regulations (19 CFR 353.22).

Dated: September 23, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-23509 Filed 9-27-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-588 029]

Final Results of Antidumping Duty Administrative Reviews: Fishnetting of Man-made Fibers From Japan

AGENCY: Import Administration, International Trade Administration, Commerce.

EFFECTIVE DATE: September 30, 1991.

FOR FURTHER INFORMATION CONTACT: Susan Strumbel or Vincent Kane, Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377–1442 and 377–2815, respectively.

Final Results

Case History

On July 19, 1991, the Department of Commerce (the Department) published in the **Federal Register** (56 FR 33246) the preliminary results of antidumping duty adminstrative reviews and intent to revoke in part the antidumping finding on fishnetting of man-made fibers from Japan (37 FR 11560, June 9, 1972). These reviews cover the following seven manufacturers and/or exporters: Fukui Fish Net Company, Ltd. (Fukui), Mitsui & Co., Ltd. (Mitsui), Nagaura Net Company, Inc. (Nagaura), Nichimen Corporation (Nichimen), Osada Fishing Net Co., Ltd. (Osada), Taito Seiko Company, Ltd. (Taito Seiko), Yamagi Fishing Net Comany, Ltd. (Yamagi) and Toyama Fishing Net Manufacturing Co., Ltd. (Toyama), during consecutive review periods from June 1, 1983 through May 31, 1987.

We have now completed these administrative reviews in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of Reviews

The product covered by these reviews is fishnetting of man-made fibers from Japan ("fishnetting"). Fishnetting is currently classifiable under subheadings 5608.11.00 and 5608.90.10 of the Harmonized Tariff System (HTS). Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of these proceedings is dispositive.

On December 29, 1986, the United States International Trade Commission (ITC) published its determination that an industry in the United States would not be materially injured or threatened with material injury, nor would the establishment of an industry in the United States be materially retarded, by reason of imports of salmon-gill fishnetting of man-made fibers from Japan covered by the antidumping finding, if that portion of the finding concerning salmon-gill fishnetting were to be revoked (51 FR 46947). The Department determined in the final results of a previous review of this finding (53 FR 10264, March 30, 1988) that the effective date of the revocation of the portion of the finding applicable to salmon-gill fishnetting is December 29, 1986, the date that the ITC's decision was published in the **Federal Register**. Therefore, salmon-gill fishnetting sold and entered after December 29, 1986 is excluded from the 1986–87 administrative review. Salmon-gill fishnetting is defined as fishnetting of continuous polyamide fibers (including nylon), consisting of monofilament yarns measuring not more than 0.806 millimeter in maximum cross-sectional dimension or multifilament yarns or cordage measuring not more than 201 denier, or a combination of the foregoing yarns or cordage, of double- of triple-knot construction, dyed or otherwise colored (except white), having a stretch mesh size of not less than 4⅛ inches and not more than 8½ inches.

United States Price

For both Nichimen/Osada and Taito Seiko, we based the United States Price on purchase price methodology as set forth in our preliminary results (56 FR 33246, July 19, 1991).

Foreign Market Value

In calculating foreign market value, the Department used home market prices, third country prices, or constructed value as set forth in our preliminary results (56 FR 33246, July 19, 1991).

Analysis of Comments Received

We invited interested parties to comment on the preliminary results. We received comments from the petitioner, American Cordage and Netting Manufacturers, and two of the respondents, Nichimen/Osada and Taito Seiko.

Comment 1: Petitioner claims that the minimum shipping conference freight tariffs provided in Taito Seiko's response should be applied to Nichimen/Osada's ocean freight calculation if the minimum rate applies to Nichimen/Oshada shipments.

DOC Response: During verification, the Department examined documents demonstrating that Nichimen/Osada correctly reported its ocean freight costs. We found no evidence that the minimum shipping conference freight tariffs applied to Nichimen/Osada's ocean freight cost.

Comment 2: Petitioner claims that the Department should not make a cost adjustment for fishnetting having extra selvedge. Selvedge is extra netting used to reinforce a particular part of the fishnetting. Petitioner states that when producing nettings of these types, the machines usually generate a double selvedge in the manufacturing process. As a result, petitioner contends that this adjustment does not exist in cost terms.

Nichimen/Osada argues that counsel for petitioner established no qualifications with respect to its knowledge of selvedge manufacturing techniques in Japan for fishnetting to be sold in Iceland. Respondent claims that the adjustment for selvedge is for actual increased costs of manufacture for enlarged selvedge and, to the best of respondent's knowledge, equipment for the production of enlarged selvedge is not found in the United States. For these reasons, respondent asserts that the cost adjustment for additional or enlarged selvedge it submitted should be accepted.

DOC Response: During verification we reviewed invoices from Nichimen's supplier of fishnetting, Osada, and found that Nichimen does incur extra cost for additional or enlarged selvedge. For this reason, we have accepted Nichimen/Osada's cost adjustments for additional or enlarged selvedge for certain sales of fishnetting to Iceland.

Comment 3: Petitioner claims that the minimum shipping conference freight tariff provided in Taito Seiko's response should be used for Taito Seiko's ocean freight calculation. Petitioner further states that Nichimen/Osada's average ocean freight cost may not be the best approximation for Taito Seiko's ocean freight cost.

Taito Seiko states that, in fact, it had no ocean freight expense. The per-unit figures it provided were hypothetical figures based on shipping rates of common carriers. Taito Seiko further states that the per-unit figures were higher than the price of the fishnetting in some cases, which only confirms that those hypothetical figures do not reflect its actual costs. Taito Seiko claims that if it had to pay such rates, it would not have made the U.S. sales. Thus, respondent argues that the Department should have used zero as the cost of Taito Seiko's ocean freight.

DOC Response: We disagree with the petitioner that it is appropriate to use the minimum shipping conference freight tariff as a basis for estimating Taito Seiko's actual ocean freight costs. Taito Seiko has not refused to provide a figure for ocean freight costs, but has merely indicated that such costs are borne by

its parent company due to the unusual circumstances under which the merchandise is shipped. On the other hand, merely because Taito Seiko is not charged by its parent for ocean freight expenses does not mean that such costs have not been incurred.

The Department has determined that it would be unreasonable to use the minimum shipping conference freight tariff as an estimate of Taito Seiko's freight costs, as this tariff is clearly an unrealistic approximation of the company's actual expense. Instead, we have continued to use Nichimen/Osada's average ocean freight costs from its public response as the best estimate of Taito Seiko's freight costs since these figures reflect actual costs for transporting the subject merchandise over comparable distances during the same time period.

Comment 4: Petitioner states that the Department should "pay close attention" to the number of days credit was extended to Taito Seiko's home market customers in light of the apparently considerable amount of time between date of shipment and date of payment.

Taito Seiko claims that the Department's methdology for calculating the company's home market credit expense was sufficiently accurate. Respondent states that it calculated its home market credit expense by counting the actual number of days between delivery of the fishnetting and receipt of a 150-day promissory note from its customer for each sale. It then added 150 days to that number for each sale. Since its books did not record actual dates of payment by its customers, Taito Seiko used the shortest number of days (150) in which the promissory note was paid in any of the sales, and adds that most home market customers paid their notes late. Therefore, respondent states that it claimed a smaller than actual credit expense on its home market sales.

DOC Response: The Department fully examined Taito Seiko's proposed home market credit expense methodology in view of the fact that credit expenses are not incurred with respect to Taito Seiko's U.S. sales. We determined that this methodology resulted in a conservative estimate of the number of days between date of shipment and date of payment and have, therefore, accepted this methodology for the calculation of credit expenses.

Use of Best Information Available

In these final results of review, the Department has had to resort to the best information available (BIA) to establish rates for certain companies. We determined that Fukui, Mitsui, Nagaura, Toyama, Yamagi were substantially cooperative, despite their failure to respond to our requests for additional information and their failure to respond to certain requests in the form required.

In deciding what to use as best information available, 19 CFR 353.37(b) provides that the Department may take into account whether a party fails to provide requested information. Thus, the Department may determine, on a case-by-case basis, what the best information available is. When a company substantially cooperated with our requests for information, but failed to provide the information requested in a timely manner or in the form required, we have used as BIA the higher of (a) the highest calculated rate for a responding firm with shipments during the period or (b) the highest rate for that company from any previous review or the original investigation. See, Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany: Final Results Antidumping Duty Administrative Review, 56 FR 31692, 31704, (July 11, 1991). Thus, we assigned these companies their highest rate from prior reviews.

Final Results of the Review

Our final results of our review are unchanged from those presented in the notice of the preliminary results of these reviews except for one manufacturer/exporter and the all other rate. The Department based Taito Seiko's foreign market value on constructed value. In computing fixed overhead cost, the Department used Taito Seiko's variable overhead cost as best information available in the preliminary results of review. We requested further information from Taito Seiko on its fixed overhead, which was supplied to us, and have used this information in our final determination.

As a result of our reviews, we determine that the following margins exist:

Manufacturer/exporter	Time period	Margin (percent)
Fukui	6/1/83-5/31/87	4.99
Mitsui	6/1/86-5/31/87	18.30
Nagaura	6/1/84-5/31/87	18.30
Nichimen/Osada	6/1/86-5/31/87	0.02
Taito Seiko	6/1/85-5/31/87	
	6/1/86-5/31/87	0.75
		1.40
Toyama	6/1/83-5/31/87	7.17
Yamagi	6/1/84-5/31/87	18.30
All others	6/1/83-5/31/87	1.40

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. The Department will issue appraisement instructions for each exporter directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of these final results of these administrative reviews for all shipments of fishnetting from Japan entered, or withdrawn from warehouse, for consumption on or after that publication date, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for all non-revoked companies in these reviews except for Mitsui will be that established in these final results; the cash deposit rate for Mitsui which was reviewed for a subsequent period will be the rate established in that period (See Final Results of the 1988/1989 Antidumping Duty Administrative Review: Fishnetting of Man-Made Fibers from Japan (55 FR 30948, July 30, 1990)); (2) for merchandise exported by manufacturers or exporters not covered in these reviews nor in any subsequent reviews, but covered in a prior review, the cash deposit rate will continue to be at the rate published in the final results of the last administrative review for such firms; (3) the cash deposit rate for all other exporters/producers will be 1.40 percent based on 1986/1987 review period; the highest of the most recently calculated non-BIA rates for any firm. This all other rate supercedes the zero rate established for the 1988/1989 period since the zero rate was based on a 1985/1986 calculated rate. See Fishnetting of Man-Made Fibers from Japan: Final Results of Antidumping Duty Administrative Review (55 FR 34042, August 21, 1990).

Revocation in Part

For the reasons set forth in the preliminary results, and because we are satisfied that there is no likelihood of resumption of sales at less than fair value, we revoke in part the antidumping finding on fishnetting of man-made fibers from Japan produced by Osada and exported by Nichimen. This partial revocation applies to all unliquidated entries of this merchandise produced by Osada and exported by Nichimen on or after June 1, 1987. The Department shall instruct the Customs Service to terminate suspension of liquidation of entries of fishnetting of man-made fibers exported by Nichimen and produced by Osada.

These administrative reviews, this revocation in part, and this notice are in accordance with sections 751 (a)(1) and (c) of the Tariff Act (19 U.S.C. 1675(a)(1)(c)), 19 CFR 353.54 (1985), and 19 CFR 353.22 (1990).

Dated: September 20, 1991.

Eric I. Garfinkel;

Assistant Secretary for Import Administration.

[FR Doc. 23510 Filed 9–27–91; 8:45 am]

BILLING CODE 3510–DS–M

[A–538–802]

Postponement of Final Antidumping Duty Determination: Shop Towels From Bangladesh

AGENCY: Import Administration, International Trade Administration, Commerce.

EFFECTIVE DATE: September 30, 1991.

FOR FURTHER INFORMATION CONTACT: Kate Johnson, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, at (202) 377–8830.

Postponement

This notice informs the public that we have received requests from Greyfab (Bangladesh) Ltd., Sonar Cotton Mills (B.D.) Ltd. and Eagle Star Textile Mills, Ltd. to postpone the final determination in the investigation of shop towels from Bangladesh, in accordance with section 735(a)(2) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d(a)(2)). These respondents account for a significant proportion of exports of the subject merchandise from Bangladesh to the United States. If exporters who account for a significant proportion of exports of the merchandise under investigation request and extension subsequent to an affirmative preliminary determination, we are required, absent compelling reasons to the contrary, to grant the request. Accordingly, we are postponing the date of the final determination as to whether sales of shop towels from Bangladesh have occurred at less than fair value until not later than January 27, 1992.

Public Comment

In accordance with 19 CFR 353.38(b), we will hold a public hearing to afford interested parties an opportunity to comment on the preliminary determination in the antidumping duty investigation of shop towels. Tentatively, the hearing will be held on December 18, 1991, at 9:30 a.m. at the U.S. Department of Commerce, room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time. In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary no later than December 11, 1991, and rebuttal briefs no later than December 16, 1991. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs.

The U.S. International Trade Commission is being advised of this postponement, in accordance with section 735(d) of the Act. This notice is published pursuant to section 735(d) of the Act and 19 CFR 353.20(b)(2).

Dated: September 20, 1991.

Erie I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91–23511 Filed 9–27–91; 8:45 am]

BILLING CODE 3510–DS–M

Export Trade Certificate of Review: Application for an Amendment

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of application for an amendment to an export trade certification of review.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an amendment to an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the Certificate should be amended.

FOR FURTHER INFORMATION CONTACT: George Muller, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a Certificate should be amended. An original and five (5) copies should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, room 1800, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 88–2A013."

OETCA has received the following application for an amendment to Export Trade Certificate of Review No. 88–00013, issued on October 19, 1988 (53 FR 43253, October 26, 1988). This certificate was previously amended on May 31, 1990 (55 FR 23123, June 6, 1990).

Summary of the Application

Applicant: CISA Export Trade Group, Inc., 6990 Rieber Street, Worthington, Ohio 43085.

Contact: Bruce Harrison, Jr., Esq., CISA Legal Counsel, Telephone: (412) 281–6501.

Application No.: 88–2A013.

Date Deemed Submitted: September 17, 1991.

The CISA Export Trade Group, Inc. (CISA ETG) seeks to amend its certificate by:

1. Deleting the following "Members" from the certificate: Beardsley & Piper Division, Chicago, IL; Georgia-Pacific Corporation, Atlanta, GA; Metaullics Systems, Solon, OH; Capital Resin Corporation, Columbia, OH; and Simplicity Engineering, Inc., Durand, MI.

2. Adding the following "Members" to the Certificate: Didion Manufacturing Company, St. Peters, MO; GMD Engineered Systems, Inc., Fort Worth, TX; Hartley Engineered Control Systems, Division of Hartley Controls Corporation, Neenah, WI and its controlling entity the Neenah Corporation, Neenah, WI; Stackpole Carbon Company, St. Marys, PA and its controlling entity The Stackpole Corporation, Boston, MA.

3. Amending the mailing address of a "Member" company as follows: Dependable Foundry Equipment Co., Inc./Redford-Carver Foundry Products, Sherwood, OR and its controlling entity Tromley Industrial Holdings, Inc., Tualatin, OR.

Dated: September 26, 1991.

George Muller,

Director, Office of Export Trading Company Affairs.

[FR Doc. 91-23512 Filed 9-27-91; 8:45 am]

BILLING CODE 3510-DS-M

United States-Canada Free-Trade Agreement, Article 1904 Binational Panel Reviews: Notice of Decision of Panel

AGENCY: United States-Canada Free-Trade Agreement, Binational Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice is hereby given, pursuant to Rule 72 of the Rules of Procedure for Article 1904 Binational Panel Reviews, that the decision of the Panel established to review the Order made by the Canadian International Trade Tribunal continuing the finding of material injury originally made on April 15, 1983, respecting Certain Dumped Integral Horsepower Induction Motors, One Horsepower (1HP) to Two Hundred Horsepower (200 HP) Inclusive, with Exceptions, Originating in or Exported from the United States of America, was issued on September 11, 1991. (Secretariat File No. CDA-90-1904-01).

SUMMARY: By a decision dated September 11, 1991, the binational Panel affirmed the finding of the Canadian International Trade Tribunal continuing the material injury finding initially made on April 15, 1983.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, Binational Secretariat, suite 4012, 14th and Constitution Avenue, Washington, DC 20230, (202) 377-5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the United States-Canada Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from the other country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1989, the Government of the United States and the Government of Canada established Rules of Procedure for Article 1904 Binational Panel Reviews ("Rules"). These Rules were published in the **Federal Register** on December 30, 1988 (53 FR 53212). The Rules were amended by Amendments to the Rules of Procedure for Article 1904 Binational Panel Reviews, published in the **Federal Register** on December 27, 1989 (54 FR 53165). The panel review in this matter was conducted in accordance with these Rules.

Background

On October 31, 1990, a Request for Panel Review was filed with the Canadian Section of the Binational Secretariat pursuant to Article 1904 of the United States-Canada Free-Trade Agreement. Panel review was requested of the final determination made by the Canadian International Trade Tribunal continuing the finding of material injury originally made on April 15, 1983, respecting Certain Dumped Integral Horsepower Induction Motors, One Horsepower (1HP) to Two Hundred Horsepower (200 HP) Inclusive, with Exceptions, Originating in or Exported from the United States of America, which was published in the Canada Gazette, part I (Vol. 124, No. 42) on October 20, 1990. The Binational Secretariat assigned Case Number CDA-90-1904-01 to this Request for Panel Review.

The Complainants Toshiba International Corporation, John Wilson Electric (Fordwich) Limited, Baldor Electric Company, Canadian Electro Drives and Dryden Agencies alleged that the Canadian International Trade Tribunal (CITT) had acted beyond its jurisdiction in holding its review hearing beyond the five-year limitation provision of section 76(5) of the Special Import Measures Act (SIMA); that the CITT erred in considering evidence of dumping in an earlier Revenue Canada decision respecting polyphase induction motors of an output exceeding 200 HP (Large Motors); that the Complainants had been denied the right to challenge the margins of dumping found in Large Motors; that the Complainants had been denied the opportunity to reply to certain evidence adduced on the last day of the hearing; that the CITT erred in considering other factors regarding a propensity to dump on the part of U.S. exporters; that the CITT erred in failing to consider the definition of "domestic industry" in its Decision; and that the CITT erred in refusing to exclude Baldor Electric Company from its Decision.

Panel Finding

The Panel found that it was necessary for the CITT to commence a review within the five-year limitation period established by section 76(5) of SIMA but that it was not necessary to complete the review by that date. The Panel concluded that the finding in Large Motors was relevant to the CITT inquiry in Small Motors and that CITT had not breached the rules of natural justice either in considering the Large Motors case or by denying the Complainants the opportunity to respond to certain evidence adduced on the last day of the hearing. With respect to the exclusion of Baldor Electric Company the majority found that the CITT did not err in refusing to exclude Baldor; one member dissented from the majority with respect to this issue only. The Panel accordingly affirmed the Finding of the CITT continuing the material injury finding.

Dated: September 25, 1991.

James R. Holbein,

United States Secretary, FTA Binational Secretariat.

[FR Doc. 91-23513 Filed 9-27-91; 8:45 am]

BILLING CODE 3510-CT-M

National Oceanic and Atmospheric Administration

Environmental Statements; Gulf of Alaska Walleye Pollock

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

ACTION: Notice of availability of an environmental assessment.

SUMMARY: An environmental assessment (EA) was prepared for the Gulf of Alaska (GOA) 1991 walleye pollock fourth quarter fishery. This EA examined GOA groundfish management measures pertaining to the fourth quarter, 1991 walleye pollock fishery. In addition to extending management measures previously implemented by emergency rule (ER) to protect Steller sea lions, the alternative selected by NMFS: (1) Opens the fishery with a preannounced closure notice; (2) requires daily production reports from pollock processors; (3) requires additional observer coverage, and (4) sets aside a sufficient amount of bycatch in each subarea necessary to accommodate fourth quarter fisheries for other groundfish species.

ADDRESSES: Copies of the EA may be obtained from Dale R. Evans, Chief, Fisheries Management Division, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802. Comments should be sent to the same address.

FOR FURTHER INFORMATION CONTACT: Raymond E. Baglin (Fisheries Management Division, NMFS), 907-586-7228.

SUPPLEMENTARY INFORMATION: NMFS established the final 1991 total allowable catch (TAC) specifications for pollock at 100,000 metric tons (mt) in the combined Western/Central Regulatory Areas, and 3,400 mt in the Eastern Regulatory Area (56 FR 28112, June 19, 1991).

NMFS evaluated the distribution of fishing effort in the GOA from 1975–1990, and concluded that a spatial and temporal compression of the fishery had developed over the time period. These latter years coincided with the period when the GOA Steller sea lion counts experienced their steepest declines. NMFS speculated that if there were a relationship between the GOA pollock fishery and Steller sea lion declines, it may be related to localized depletions of pollock caused by fishing effort concentrated in both space and time. Thus, NMFS implemented time and area restrictions to disperse fishing effort.

Amendment 19 to the Groundfish of the Gulf of Alaska Fishery Management Plan, effective January 1, 1991, established a quarterly allocation system for the combined Western/Central Regulatory Areas pollock total allowable catch (TAC) to prevent a disproportionate amount of pollock harvest being taken in any one season, as occurred in 1989. This amendment allowed harvest shortfalls from one quarter to be added to the subsequent quarters' allowances. Because carryovers of unharvested TAC into subsequent quarters could theoretically result in a large proportion of the TAC being harvested in the fourth quarter, via ER (56 FR 28112, June 19, 1991), NMFS limited the amount of carryover so that no quarterly allowance could exceed 150 percent of the initial quarterly TAC.

Analysis of fishery and Steller sea lion data by NMFS indicated that since 1987 the majority of the GOA pollock catch has been taken in the areas to the south and east of Kodiak Island. These same locations were also frequented by tagged Steller sea lions, which were presumably feeding. To divert some fishing effort away from these locations, NMFS allocated the combined Western/Central Regulatory Areas pollock TAC equally to the east and west of 154° W. longitude.

The NMFS also established a 10-nautical mile, no-trawal-fishing zone around Steller sea lion rookeries in the GOA and the Bering Sea and Aleutian Islands areas to provide additional protection to Steller sea lions and their food supply in these important habitats.

The pollock fishery opened on June 13, 1991. In late July, NMFS closed the combined Western/Central Regulatory Areas in the GOA to directed fishing for pollock to prevent the third quarter allocation of pollock from being exceeded (56 FR 33884, July 24, 1991 and 56 FR 35835, July 29, 1991).

The total directed pollock harvest through the third quarter of 1991 is approximately 70,013 mt for the combined Western/Central subareas, which included 5,277 mt of reported discards for these areas. The actual harvest of pollock exceeded the quota slightly during the first and third quarters in the Central Gulf subarea, but exceeded the quota in the third quarter in the Western Gulf subarea by about 38 percent (7,092 mt). Vessels from the Bering Sea unexpectedly entered the Western subarea. Based on reported amounts of processed product, catches jumped from 1,000 mt/week to 9,900 mt/week, to 4,000 mt/day the last 3 days of the third quarter fishery. The sudden, very high catch rates caused the fisheries to overrun the Western subarea quota of 18,750 mt by about the equivalent of almost 3 day's fishing time at the end of the third quarter.

In light of this overrun, NMFS prepared an environmental assessment to assess the effects on the environment of a fourth quarter pollock fishery, including any effects on Steller sea lions, and to consider the need for additional management measures necessary to prevent an overrun of the fourth quarter pollock allowances in the Western and Central areas.

This assessment examined the potential impacts of four alternative management options for the fourth quarter 1991 GOA pollock fishery. The impacts examined included projected effects of the physical and biological environment including Steller sea lion and pollock populations and effects on the total exvessel value of the pollock fishery. On the basis of this environmental assessment, NMFS has determined that the fourth quarter pollock fishery will not significantly affect the quality of the human environment, and that preparation of an environmental impact statement is not required.

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

Dated: September 24, 1991

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 91–23504 Filed 9–27–91; 8:45 am]

BILLING CODE 3510–22–M

COMMISSION ON AGRICULTURAL WORKERS

Workshop and Hearing

AGENCY: Commission on Agricultural Workers.

ACTION: Announcement of workshop and hearing.

SUMMARY: The Commission on Agricultural Workers will hold a workshop and a public hearing in Las Cruces, New Mexico on October 23, 1991.

The Commission, established by the Immigration Reform and Control Act (IRCA) of 1986 under section 304 is charged with evaluating the Special Agricultural Worker (SAW) provisions of IRCA and with reviewing several specific questions relating to the demand for and supply of agricultural labor. The workshop will address the impact of IRCA on international competitiveness. The hearing will focus on specific agricultural issues concerning the state of New Mexico.

The workshop and hearing will be open to the public.

DATES: October 23, Workshop—8:30 a.m.–11:30 a.m. Hearing—1 p.m.–5 p.m.

ADDRESSES: Corbett Center Auditorium, New Mexico State University, Las Cruces, New Mexico.

FOR FURTHER INFORMATION CONTACT: Beth Bickley, Telephone: (202) 673–5348.

Aaron Bodin,

Executive Director.

[FR Doc. 91–23484 Filed 9–27–91; 8:45 am]

BILLING CODE 6820–62–M

DEPARTMENT OF ENERGY

Solicitation for Cooperative Agreements; Industrial Waste Reduction Program

AGENCY: Department of Energy Field Office, Albuquerque.

ACTION: Solicitation for cooperative agreements.

SUMMARY: The U.S. Department of Energy (DOE) pursuant to the DOE Financial Assistance Rules, 10 CFR 600.15 intends to issue Solicitation No. DE–SC04–91AL75498 for the Industrial Waste Reduction Program on October 15, 1991.

DATES: The Solicitation will remain open until December 13, 1991.

ADDRESSES AND FOR FURTHER INFORMATION CONTACT: To obtain a complete solicitation package, please contact Melanie Thomas, Department of

Energy Field Office, Albuquerque, Contracts and Procurement Division, P.O. Box 5400, Albuquerque, NM 87185–5400 or call Ms. Thomas at (505) 845–6960.

SUPPLEMENTARY INFORMATION:

Program Title: Industrial Waste Reduction Program.

Solicitation Number: DE–SC04–91AL75498.

Citation of Authority: Public Law 95–91.

The U.S. Department of Energy (DOE), Office of Industrial Technologies, is planning to fund research and development technologies in the Industrial Waste Reduction Program. For the purpose of this solicitation, technologies include concepts, processes, and/or hardware. The U.S. DOE Field Office, Albuquerque intends to issue a competitive solicitation for unique and innovative technologies in the areas of industrial processes, process changes, feedstock substitution, and/or product changes that will conserve energy while minimizing or reducing industrial waste material. The term "innovative technology" will be used in a very broad sense and includes, but is not limited to, (1) development of new processes, materials, or products, (2) substitution of materials or products, or (3) significant changes to existing manufacturing processes and operations. Applications with innovative technology applicable to more than one industry with enhanced energy savings potential are encouraged.

Applications must meet the nominal U.S. national net energy savings goal of one trillion BTUs by fuel type per year by the year 2010. Waste reduction does not include waste heat, noise, electromagnetic radiation, nuclear radiation, lowering the level or degree that waste is toxic or hazardous, and those cross-media transfers (i.e. processes that convert waste material into different physical states such as from solid to liquid or gas) which are for the purpose of reducing the toxicity or hazardousness of the waste. The focus of this effort will be on the chemical industry but industries in SIC 1–39 will also be considered. Research and Development activities will be classified into four progressive phases. Phase I is "Exploratory Development", Phase II is "Technology Development", Phase III is "Engineering Development" for pilot-scale and full-scale test, and Phase IV is "Demonstration" to test and verify the potential commercial application. Applicants may propose one or more of these phases. The proposed effort may be initiated at any phase if conclusive evidence is presented that the previous phase(s) have been completed successfully.

Multiple awards are expected to be made in FY 92 (possible three to four Cooperative Agreements). The period of performance for these Cooperative Agreements may vary from several months to 3–5 years, depending on the projects selected. Estimated DOE funding available is $1 million for FY 92, $1.5 million for FY 93, and $1.5 million for FY 94.

A minimum of 50 percent cost sharing over the life of the project is required.

Industrial participation or support by the affected industry is essential in all phases proposed. Industrial participation directly related to the project may be in the form of cost sharing. A complete solicitation package with information on application preparation, evaluation procedures and criteria, the extent of Government participation in the Cooperative Agreements to be awarded, and other required data will be available upon request during the time the solicitation is open. Please note that both DOE and non-DOE evaluators will be used to evaluate applications.

All responsible sources may submit an application which will be considered. Applications must be submitted no later than December 13, 1991, to the DOE Field Office, Albuquerque at the address listed in the "Addresses" section of this Notice.

Richard A. Marquez,

Assistant Manager for Management and Operations, Field Office, Albuquerque.

[FR Doc. 91–23489 Filed 9–27–91; 8:45 am]

BILLING CODE 6450–01–M

Energy Information Administration

Agency Information Collections Under Review By the Office of Management and Budget

AGENCY: Energy Information Administration, Energy.

ACTION: Notice of requests submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (Pub. L. No. 96–511, 44 U.S.C. 3501 et seq.) The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection (the DOE component or Federal Energy Regulatory Commission (FERC)); (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, extension, or reinstatement; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses per respondent annually; (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden; and (13) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed within 30 days of publication this notice. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Officer listed below or your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the EIA contact listed below.)

ADDRESSES: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Jay Casselberry, Office of Statistical Standards, (EI–73), Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Mr. Casselberry may be telephoned at (202) 586–2171.

SUPPLEMENTARY INFORMATION: The energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission (FERC).
2. FERC–714.
3. 1902–0140.
4. Annual Electric Control and Planning Area Report.
5. Revision—Beginning with the 1991 collection year, the FERC–714 (formerly the EIA–714) will be solely sponsored by the FERC. Minor changes have been made to the form and instructions.
6. Annually.

7. Mandatory.
8. State and local governments.
9. 270 respondents.
10. 1 response.
11. 86 hours per response.
12. 23,220 hours.
13. The form gathers basic utility operating and planning information primarily on a control area basis for the purpose of evaluating utility operations related to proposed mergers, interconnections, wholesale rate investigations, hydroelectric licensing, and wholesale market changes and trends under emerging competitive forces. Respondents are major electric utilities.

Statutory Authority: Sec. 5(a), 5(b), 13(b), and 52, Pub. L. No. 93–275, Federal Energy Administration Act of 1974, 15 U.S.C. 764(a), 764(b), 772(b), and 790a.

Issued in Washington, DC, September 24, 1991.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 91–23491 Filed 9–26–91; 8:45 am]

BILLING CODE 6450–01–M

Agency Information Collections Under Review By the Office of Management and Budget

AGENCY: Energy Information Administration, Energy.

ACTION: Notice of requests submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (Pub. L. No. 96–511, 44 U.S.C. 3501 et seq.). The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection (the DOE component or Federal Energy Regulatory Commission (FERC)); (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, extension, or reinstatement; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses per respondent annually; (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden; and (13) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed within 30 days of publication of this notice. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the EIA contact listed below.)

ADDRESSES: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Jay Casselberry, Office of Statistical Standards, (EI–73), Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Mr. Casselberry may be telephoned at (202) 586–2171.

SUPPLEMENTARY INFORMATION: The energy information collection submitted to OMB for review was:

1. Energy Information Administration.
2.EIA–867.
3. 1905–0177.
4. Annual Nonutility Power Producer Report.
5. Revision.
6. Annual.
7. Mandatory.
8. State or local governments, farms, businesses or other for profit, non-profit institutions, small businesses or organizations.
9. 2,079 respondents.
10. 1 response per respondents.
11. 2.27 hours per response.
12. 4,719 hours burden.
13. EIA–867 is required annually from nonutility power producers who own or plan on installing electric generation equipment with a total capacity of 5 megawatts or more at an existing or proposed site. The data will be used to augment existing electric utility data, and our electric power forecasts and analyses.

Statutory Authority: Sec. 5(a), 5(b), 13(b), and 52, Pub. L. No. 93–275, Federal Energy Administration Act of 1974, 15 U.S.C. §§ 764(a), 764(b), 772(b), and 790a.

Issued in Washington, DC, September 25, 1991.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 91–23492 Filed 9–27–91; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ER91–647–000, et al.]

Pacific Gas and Electric Co., et al.; Electric Rate, Small Power Production. and Interlocking Directorate Filings

September 23, 1991.

Take notice that the following filings have been made with the Commission:

1. Pacific Gas Electric Co.

[Docket No. ER91–647–000]

Take notice that on September 18, 1991, Pacific Gas and Electric Company (PG&E) tendered for filing a Letter Agreement amending Rate Schedule FERC No. 79. This Rate Schedule covers services rendered by PG&E to the Western Area Power Administration (Western) under Contract No. 14–06–200–2948A (Contract 2948A). The Letter Agreement changes from four to five years the effective and notice dates specified in Articles 11, 19(d)(2), 27(a) and 27(b) of Contract 2948A.

The parties have been operating in accordance with this Letter Agreement since January 19, 1968. PG&E has requested that the amendment be made effective as of January 19, 1968.

Copies of this filing have been served on Western and the California Public Utilities Commission. In addition, copies of this filing are available for public inspection in a convenient form and place during normal business hours at PG&E's General Office in San Francisco.

Comment date: October 7, 1991, in accordance with Standard Paragraph E at the end of this notice.

2. Public Service Co. of New Mexico

[Docket No. ER91–644–000]

September 23, 1991.

Take notice that on September 13, 1991, Public Service Company of New Mexico (PNM) tendered for filing Restated Amendment Number Five to an Agreement for Electric Service between PNM and Plains Electric Generation and Transmission Cooperative, Inc. (Plains). An Amendment Number Five to the Agreement has previously been accepted for filing by the Commission. Restated Amendment Number Five is necessitated by the action of the Rural

Electrification Administration (REA) in declining to approve Amendment Number Five. In order to accommodate concerns of the REA, Restated Amendment Number Five extends the effective date of the Agreement but imposes certain limits on the amount of power and energy and transmission service the PNM will be required to provide to Plains.

PNM has requested that the applicable notice requirements be waived, and that the Commission accept for filing Restated Amendment Number Five to be effective August 1, 1991.

Copies of PNM's filing have been served upon Plains and the New Mexico Public Service Commission.

Comment date: October 7, 1991, in accordance with Standard Paragraph E at the end of this notice.

3. The Washington Water Power Co.

[Docket No. ER91-646-000]

Take notice that on September 16, 1991, the Washington Power Company (WWP), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.11 a Firm Energy Sale Agreement between The Washington Water Power Company and Bonneville Power Administration. The Agreement provides for the sale of Firm Energy during light load hours for the period September 1, 1991 to March 31, 1992. WWP requests that the Commission (a) accept the Agreement for filing, effective as of September 1, 1991, and (b) grant a waiver of notice pursuant to 18 CFR 35.11, to allow the filing of the Agreement less than 60 days prior to the date on which service under the Agreement is to commence.

A copy of the filing was served upon Bonneville Power Administration.

Comment date: October 7, 1991, in accordance with Standard Paragraph E at the end of this notice.

4. Southern Company Services, Inc.

[Docket No. ER91-645-000]

Take notice that on September 16, 1991, Southern Company Services, Inc., acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company and Savannah Electric and Power Company ("Southern Companies"), tendered for filing an Interchange Contract between Southern Companies and South Carolina Electric & Gas Company. The Interchange Contract establishes the terms and conditions of power supply, including provisions relating to service conditions, control of system disturbances, metering and other matters related to the administration of the agreement. Services provided thereunder are governed by Service Schedules providing for emergency assistance, short-term power and economy transactions. The Interchange Contract utilizes a formula rate methodology applicable to emergency assistance and short-term power, which is designed to facilitate the periodic revision of charges to reflect change in costs.

Comment date: October 7, 1991, in accordance with Standard Paragraph E at the end of this notice.

5. Illinois Power Co.

[Docket No. ER91-535-000]

Take notice that Illinois Power Company on September 19, 1991, tendered for filing revisions to the Addenda which was filed on July 2, 1991.

The original filing has been amended to correct certain deficiencies including the failure to place a cap on the total charges associated with rate schedules containing availability charges and a failure to protect against the overrecovery of the total charges for transactions of greater than five days in rate schedules which contain demand charges or availability charges.

Copies of the filing were served upon the Illinois Commerce Commission and the appropriate utilities interconnected with IP.

Comment date: October 7, 1991, in accordance with Standard Paragraph E at the end of this notice.

6. The Dayton Power and Light Co.

[Docket No. ER91-652-000]

Take notice that the Dayton Power and Light Company (Dayton) tendered for filing on September 19, 1991, an executed Letter Agreement extending the term of the existing Purchase and Resale Agreement (Agreement) between Dayton and the Village of Lakeview, Ohio (Village).

The proposed Letter Agreement extends the term of the existing Agreement to allow Village to continue to purchase energy requirements from third parties who will use their existing Interconnection Agreement Rate Schedules to deliver the energy requirements to Dayton for final delivery to Village. An October 1, 1991, effective date has been requested. A copy of this filing was served upon Village and The Public Utilities Commission of Ohio.

Comment date: October 7, 1991, in accordance with Standard Paragrapah E at the end of this notice.

7. Century Power Corp.

[Docket No. ER91-648-000]

Take notice that on September 18, 1991, Century Power Corporation ("Century") tendered for filing an executed Power Sale Agreement between Century and the Cities of Azusa and Colton, California (the "Cities"). The Agreement provides for the sale to the Cities of 15 MW of capacity and associated energy effective January 1, 1992 through December 31, 1994. Energy sales are contingent on the availability of the San Juan Unit No. 3.

Comment date: October 7, 1991, in accordance with Standard Paragraph E end of this notice.

8. The Dayton Power and Light Co.

[Docket No. ER91-651-000]

Take notice that the Dayton Power and Light Company (Dayton) tendered for filing on September 19, 1991, an executed Letter Agreement extending the term of the existing Purchase and Resale Agreement (Agreement) between Dayton and the Village of Arcanum, Ohio (Village).

The proposed Letter Agreement extends the term of the existing Agreement to allow Village to continue to purchase energy requirements from third parties who will use their existing Interconnection Agreement Rate Schedules to deliver the energy requirements to Dayton for final delivery to Village. An October 1, 1991, effective date has been requested. A copy of this filing was served upon Village and The Public Utilities Commission of Ohio.

Comment date: October 7, 1991, in accordance with Standard Paragraph E end of this notice.

9. The Dayton Power and Light Co.

[Docket No. ER91-653-000]

Take notice that the Dayton Power and Light Company (Dayton) tendered for filing on September 19, 1991, an executed Letter Agreement extending the term of the existing Purchase and Resale Agreement (Agreement) between Dayton and the Village of Jackson Center, Ohio (Village).

The proposed Letter Agreement extends the term of the existing Agreement to allow Village to continue to purchase energy requirements from third parties who will use their existing Interconnection Agreement Rate Schedules to deliver the energy requirements to Dayton for final delivery to Village. An October 1, 1991, effective date has been requested. A copy of this fishing was served upon

Village and The Public Utilities Commission of Ohio.

Comment date: October 7, 1991, in accordance with Standard Paragraph E at the end of this notice.

10. The Dayton Power and Light Co.

[Docket No. ER91-654-000]

Take notice that the Dayton Power and Light Company (Dayton) tendered for filing on September 19, 1991, an executed Letter Agreement extending the term of the existing Purchase and Resale Agreement (Agreement) between Dayton and the Village of Yellow Springs, Ohio (Village).

The proposed Letter Agreement extends the term of the existing Agreement to allow Village to continue to purchase energy requirements from third parties who will use their existing Interconnection Agreement Rate Schedules to deliver the energy requirements to Dayton for final delivery to Village. An October 1, 1991, effective date has been requested. A copy of this filing was served upon Village and The Public Utilities Commission of Ohio.

Comment date: October 7, 1991, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in 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. 91-23423 Filed 9-27-91; 8:45 am]

BILLING CODE 6717-01-M

[Projects Nos. 9690, 10481, & 10482 New York]

Orange and Rockland Utilities, Inc. Availability of Environmental Assessment

September 23, 1991.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations 18 CFR part 380 (Order no. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the applications for major license for the existing Swinging Bridge, Mongaup Falls, and Rio Projects located on the Mongaup River in Sullivan and Orange Counties, near Port Jervis, New York, and has prepared an Environmental Assessment (EA) for the projects. In the EA, the Commission's staff has analyzed the environmental impacts of the projects and has concluded that issuance of licenses for the projects, with appropriate enhancement measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, room 3308, of the Commission's office at 941 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 91-23428 Filed 9-27-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP91-3116-000, et al.]

Panhandle Eastern Pipe Line Co., et al.; Natural Gas Certificate Filings

September 23, 1991.

Take notice that the following filings have been made with the Commission:

1. Panhandle Eastern Pipe Line Co.

[Docket Nos. CP91-3116-000, CP91-3117-000, CP91-3118-000, CP91-3119-000]

Take notice that Panhandle Eastern Pipe Line Company, P.O. Box 1642, Houston, Texas 77251-1642, (Applicant) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP86-585-000, 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 § 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

Comment date: November 7, 1991, 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 Dth	Receipt points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-3116-000 (9-17-91)	Borden Chemicals & Plastics Operating (End user).	2,000 2,000 730,000	KS	IL	8-1-91, PT, Firm	ST91-10070, 8-1-91.
CP91-3117-000 (9-17-91)	Taurus Energy Corp. (Intrastate).	5,000 5,000 1,825,000	Various	OH	7-24-91, PT, Interruptible.	ST91-10096, 8-1-91.
CP91-3118-000 (9-17-91)	O&R Energy, Inc. (Marketer).	50,000 50,000 18,250,000	Various	MO	7-30-91, PT, Interruptible.	ST91-10248, 8-1-91.
CP91-3119-000 (9-17-91)	Aquila Energy Marketing Co. (Marketer).	250,000 250,000 91,250,000	Various	MI	7-31-91, PT, Interruptible.	ST91-10097, 8-1-91.

2. Transcontinental Gas Pipe Line Corp.

[Docket Nos. CP91-3130-000, CP91-3131-000, CP91-3132-000, CP91-3133-000, CP91-3134-000]

Take notice that on September 18, 1991, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, 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 shippers under its blanket certificate issued in Docket No. CP88-328-000, 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.[2]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Transco and is summarized in the attached appendix.

Comment date: November 7, 1991, in accordance with Standard Paragraph G at the end of this notice.

[2] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual Dth	Receipt points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-3130-000 (9-18-91)	Stand Energy Corporation (Marketer).	3,200 3,200 1,168,000	Various	NC, NJ	IT, Interruptible	ST91-10263-000, 7-30-91.
CP91-3131-000 (9-18-91)	Phillips Petroleum Company (Producer).	400,000 400,000 146,000,000	Various	LA, TX	IT, Interruptible	ST91-10275-000, 8-1-91.
CP91-3132-000 (9-18-91)	Tenngasco Corporation (Marketer).	900,000 150,000 54,750,000	Various	GA, LA, TX	IT, Interruptible	ST91-10277-000, 8-1-91.
CP91-3133-000 (9-18-91)	Union Pacific Fuels, Inc. (Marketer).	550,000 50,000 18,250,000	Various	LA, TX	IT, Interruptible	ST91-10278-000, 8-1-91.
CP91-3134-000 (9-18-91)	O&R Energy, Inc. (Marketer).	500,000 500,000 182,500,000	Various	LA, TX	IT, Interruptible	ST91-10274-000, 8-1-91.

3. Williston Basin Interstate Pipeline Co.

[Docket Nos. CP91-3110-000, Docket No. CP91-3112-000, Docket No. CP91-3113-000]

Take notice that on September 17, 1991, Williston Basin Interstate Pipeline Company (Williston Basin), suite 200, 304 East Rosser Avenue, Bismarck, North Dakota 58501, 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 shippers under its blanket certificate issued in Docket No. CP89-1118-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[3]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Williston Basin and is summarized in the attached appendix.

Comment date: November 7, 1991, in accordance with Standard Paragraph G at the end of this notice.

[3] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual Dth	Receipt points	Delivery points	Contract date, rate schedule, service type	Related docket start up date
CP91-3110-000 (9-17-91)	Chevron USA, Inc. (producer).	15,000 15,000 5,745,000	ND, MT, WY	ND, WY	[1] 8-20-91, IT-1, interruptible.	ST91-10226-000, 8-1-91.
CP91-3112-000 ST91-10225-000 (9-17-91)	Koch Hydrocarbon Company (producer).	[2] 0 0 0	ND, WY	ND, WY	[3] 5-2-91, IT-1, interruptible.	8-1-91.
CP91-3113-000 (9-17-91)	Texaco Gas Marketing, Inc. (marketer).	37,038 37,038 13,518,870	ND, MT, WY	ND, WY, SD, MT	[4] 9-21-90, IT-1, interruptible.	ST91-10227-000, 8-22-91.

[1] As amended.
[2] Williston Basin seeks authority to add additional delivery points to the initial transportation agreement. No additional volumes will be transported.
[3] As amended.
[4] As amended.

4. Northern Natural Gas Co.

[Docket No. CP91-3136-000, CP91-3137-000, CP91-3138-000, CP91-3139-000]

Take notice that on September 19, 1991, Northern Natural Gas Company (Northern), 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 shippers under its blanket certificate issued in Docket No. CP86-435-000, 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.[4]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Northern and is summarized in the attached appendix.

Comment date: November 7, 1991, in accordance with Standard Paragraph G at the end of this notice.

[4] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day, average day annual MMBtu	Receipt points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-3136-000 (9-19-91)	Enron Gas Marketing, Inc. (Marketer).	500,000 375,000 182,500,000	Various	Various	9-9-91, IT-1, Interruptible.	ST91-10328-000, 8-20-91.
CP91-3137-000 (9-19-91)	Tenaska Marketing Ventures (Marketer).	250,000 187,500 91,250,000	Various	Various	9-10-91, IT-1, Interruptible.	ST91-10144-000, 8-1-91.
CP91-3138-000 (9-19-91)	NGC Transportation Ventures (Marketer).	200,000 150,000 73,000,000	Various	Various	9-10-91, IT-1, Interruptible.	ST91-10142-000, 8-1-91.
CP91-3139-000 (9-19-91)	Kerr-McGee Corporation (Producer).	88,487 66,343 32,286,806	Off LA, Off TX	Off LA	8-30-91, IT-1, Interruptible.	ST91-10331-000, 8-25-91.

5. Williston Basin Interstate Pipeline Co.

[Docket No. CP91-3129-000]

Take notice that on September 18, 1991, Williston Basin Interstate Pipeline Company (Williston Basin), suite 200, 304 East Rosser Avenue, Bismarck, North Dakota 58501, filed in Docket No. CP91-3129-000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act for authorization to reassign volumes of gas to be delivered from one delivery point to another point for Montana-Dakota Utilities Co. under Williston Basin's blanket certificate obtained in Docket No. CP83-1-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Williston Basin requests to delete the Danford Master Meter (Danford) delivery point from its Rate Schedule G-1 gas service agreement with Montana-Dakota Utilities Co. and to transfer the 270 Mcf equivalent of natural gas to the Billings, Montana, border stations. Williston Basin also states that the proposed transfer of this maximum daily quantity (MDQ) is required as service is not necessary at the Danford location. Williston states that the transfer of the MDQ quantities would have no effect on its peak day and annual.

Comment date: November 7, 1991, in accordance with Standard Paragraph G at the end of this notice.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed 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. 91-23424 Filed 9-27-91; 8:45 am]

BILLING CODE 6717-01-M

Federal Energy Regulation Commission

[Docket Nos. CP91-3052-000, et al.]

Stingray Pipeline Co. et al.; Natural Gas Certificate Filings

September 20, 1991.

Take notice that the following filings have been made with the Commission:

1. Stingray Pipeline Co.

[Docket No. CP91-3052-000]

Take notice that on September 11, 1991, Stingray Pipeline Company (Stingray), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP91-3052-000 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 natural gas on behalf of Tenngasco Corporation (Tenngasco) under the blanket certificate issued by the Commission's Order 509 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.

Stingray would perform the proposed interruptible transportation service for Tenngasco, a marketer of natural gas,

pursuant to an Interruptible Gas Transportation Service Agreement dated June 25, 1991 (Reference No. IP–2943). The term of the transportation agreement is from the June 25, 1991, and shall remain effective for a primary term ending July 31, 1991, and continue in effect month-to-month until terminated by Stingray or Tenngasco upon at least 30 days' prior written notice to the other. Stingray proposes to transport on a peak day up to 100,000 MMBtu; on an average day up to 25,000 MMBtu; and on an annual basis up to 9,125,000 MMBtu of natural gas for Equitable Stingray states that it would receive the gas at receipt points in Louisiana, Offshore Louisiana and Offshore Texas. It is alleged the rate to be charged Tenngasco for the proposed schedule. Stingray avers that construction of facilities would not be required to provide the proposed service.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Commission's regulations. Stingray commenced such self-implementing service on July 1, 1991, as reported in Docket No. ST91–9867–000.

Comment date: November 4, 1991, in accordance with Standard Paragraph G at the end of this notice.

2. Tennessee Gas Pipeline Co.

[Docket No. CP91–3135–000]

Take notice that on September 19, 1991, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP91–3135–000 an application pursuant to sections 7(b) and (c) of the Natural Gas Act for an order granting permission and approval to abandon firm sales service and a certificate of public convenience and necessity authorizing Tennessee to render firm storage service and to remove the restriction on storage injections of third party gas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Tennessee requests authorization to: (1) Render firm storage service under Rate Schedules SS–ESS–NE, or SS–S for 18 sales customers in aggregate daily maximum quantities of 294,625 Dth and aggregate annual quantities of 33,086,159 Dth (see appendix); (2) abandon firm sales to these same 18 customers for corresponding amount of maximum daily quantities and (3) amend Rate Schedules SS–NE and SS–E to remove the quantity restriction on injection of third party gas supplies.

Tennessee states that these 18 customers have Annual Quantity Limitations (AQL) on their sales service which are less than 365 times the Maximum Daily Quantities (MDQ). Tennessee states that the proposed changes in storage and sales service would result in the customers having a 100 percent AQL load factor.

Tennessee states that this application was filed pursuant to, and in conjunction with, the Stipulation and Agreement filed in Docket Nos. RP88–228 *et al.* on July 25, 1991. Tennessee further states that it will file a motion to consolidate these proceedings.

Comment date: October 11, 1991, in accordance with Standard Paragraph F at the end of this notice.

APPENDIX—CHANGES IN STORAGE AND SALES SERVICE

Customer	Current CD (Dth/d)	Proposed CD (Dth/d)	Proposed Storage	
			Daily (Dth/d)	Annual (Dth)
Alabama Tennessee	132,502	120,176	12,326	951,828
East Tennessee	404,968	329,198	75,770	10,568,021
Piedmont	120,000	64,100	55,900	3,574,034
Penn & Southern	12,744	8,027	4,717	424,530
NYSEG	28,560	18,816	9,744	879,818
Berkshire	25,572	18,350	7,222	989,862
Boston Gas	135,999	94,312	41,687	5,406,507
Colonial	50,000	42,496	7,504	1,053,898
Commonwealth	56,826	47,387	9,439	1,164,375
Yankee Gas	45,280	29,419	15,861	1,767,623
Connecticut Natural	27,751	22,652	5,099	465,003
Energy North	37,472	24,848	12,624	1,458,750
Essex County	20,900	15,728	5,172	780,928
Fitchburg	10,246	8,234	2,012	303,855
Granite State	86,103	70,903	15,200	1,435,340
Southern Connecticut	47,040	37,632	9,408	1,208,928
Valley	23,590	19,335	4,255	549,434
Holyoke	10,000	9,315	685	103,425
Total	1,275,553	980,928	294,625	33,086,159

3. Transcontinental Gas Pipe Line Corp.

[Docket No. CP91–3148–000, CP91–3149–000]

Take notice that on September 19, 1991, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, 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 shippers under its blanket certificate issued in Docket No. CP88–328–000 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 § 284.223 of the Commission's Regulations, has been provided by Transco and is summarized in the attached appendix.

Comment date: November 4, 1991, 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 Dth	Receipt points	Delivery points	Contract date rate schedule service type	Related docket, start up date
CP91-3148-000 (9-19-91)	Texas Gas Marketing Inc. (Marketer).	5,000,000 4,000,000 146,000,000	Various	LA, TX	7-8-91, IT, Interruptible.	ST91-10280-000, 8-1-91.
CP91-3149-000 (9-19-91)	Stellar Gas Company (Marketer).	250,000 250,000 91,250,000	Various	LA, TX	7-17-91, IT, Interruptible.	ST91-10286-000, 8-1-91.

4. Alabama-Tennessee Natural Gas Co.

[Docket No. CP91-3067-000]

Take notice that on September 11, 1991, Alabama-Tennessee Natural Gas Company (Alabama-Tennessee), Post Office Box 918, Florence, Alabama 35631, filed a request with the Commission in Docket No. CP91-3067-000 pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to increase the interruptible natural gas volumes that it transports for American-Fructose, Decatur, Inc. (American-Fructose), an end-user, under its blanket transportation certificate issued in Docket No. CP89-2201-000 pursuant to section 7 of the NGA, and to add two sales taps as delivery points to Reynolds Metal Company (Reynolds), also an end-user, under its blanket construction and operation certificate issued in Docket No. CP85-359-000 pursuant to section 7 of the NGA, all as more fully set forth in the request which is open to public inspection.

Alabama-Tennessee states that it proposes to increase the currently authorized interruptible natural gas volumes it transports for American-Fructose near Decatur, Alabama, from 5,000 dekatherms to 8,400 dekatherms on peak and average days and from 1,860,000 dekatherms to 3,124,000 dekatherms annually. Alabama-Tennessee's current interruptible transportation volumes were authorized by the Commission upon expiration without protest of the 45-day prior-notice period in Docket No. CP90-1734-000.

Alabama-Tennessee also states that it proposes to add two existing sales taps on its system in Sheffield, Colbert County, Alabama, as delivery points to Reynolds. Alabama-Tennessee states that it would deliver up to 25,000 dekatherms of natural gas per day to Reynolds via these proposed delivery points under Alabama-Tennessee's currently effective FERC Rate Schedule IT.

Comment date: November 4, 1991, in accordance with Standard Paragraph G at the end of this notice.

5. Mississippi River Transmission Corp., et al.

[Docket Nos. CP91-3100-000, CP91-3101-000, CP91-3102-000, CP91-3103-000, CP91-3128-000]

Take notice that on September 16, 1991, Mississippi River Transmission Corporation, 9900 Clayton Road, St. Louis, Missouri 63124, Transcontinental Gas Pipe Line Corporation, P.O. Box 1396, Houston, Texas 77251, and on September 18, 1991, Williston Basin Interstate Pipeline Company, suite 200, 304 East Rosser Avenue, Bismarck, North Dakota 58501, (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 shippers under the blanket certificates issued in Docket No. CP89-1121-000 Docket No. CP88-328-000, and Docket No. CP89-1118-000, respectively, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[2]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix.

Comment date: November 4, 1991, in accordance with Standard Paragraph G at the end of this notice.

[2] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual Dth	Receipt points	Delivery points	Contract date, rate schedule, service type	Related docket [1] start up date
CP91-3100-000 (9-16-91)	Marathon Oil Company (Producer).	10,000 10,000 [2] 3,650,000	LA, AR, TX, IL	MO	7-1-91, ITS, Interruptible.	ST91-9976-000, 7-18-91.
CP91-3101-000 (9-16-91)	Catex Energy, inc. (Marketer).	250,000 50,000 18,250,000	Off LA, Off TX, TX, LA, MS, AL.	TX, LA	7-16-91, IT, Interruptible.	ST91-10278-000, 8-1-91.
CP91-3102-000 (9-16-91)	Municipal Gas Authority of Georgia (Marketer).	200,000 100,000 36,500,000	Off LA, Off TX, TX, LA, MS, AL.	TX, LA	7-10-91, IT, Interruptible.	ST91-10273-000, 8-1-91.
CP91-3103-000 (9-16-91)	Oxy U.S.A., Inc. (Producer).	370,600 370,600 135,269,000	Off LA, Off TX, TX, LA, MS, AL.	TX, LA	7-10-91, IT, Interruptible.	ST91-10265-000, 8-1-91.
CP91-3128-000 (9-18-91)	Amerada Hess Corp. (Producer).	10,000 10,000 1,210,000	ND	ND	9-16-91, FT-1, Firm.	11-2-91.

[1] If an ST docket is shown, 120-day transportation service was reported in it.
[2] MRT's quantities are in MMBtu.

6. Northern Natural Gas Co.

[Docket No. CP91–3081–000]

Take notice that on September 13, 1991, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed in Docket No. CP91–3081–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the operation of existing facilities in the Cunningham Storage Reservoir as a jurisdictional delivery point in order to sell natural gas to Kansas Gas Supply Corporation (Kansas Gas) for resale to industrial heating and electrical generation markets, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that Kansas Gas owns and operates an intrastate pipeline system in Kansas and wants to purchase gas from Northern at an existing meter station located in the Southwest area of the Cunningham Field, because of its need for additional gas supplies at market prices to serve its system peaking requirements, on an interruptible basis. It is stated that Kansas Gas would require up to a maximum daily contract quantity of 15,000 Mcf of natural gas per day.

Northern states that operationally, sales of natural gas to Kansas Gas would be an ideal method to drain mobile gas saturations from the Southwest area of the Cunningham Field through Well #7–23 and deliver such gas to Kansas Gas at low pressures since gas migrating into this area is not recoverable with Northern's existing facilities for reinjection into storage. Northern states that its request to operate an existing meter station as a jurisdictional delivery point to sell natural gas to Kansas Gas under its Rate Schedule I–SS would reduce or eliminate the need for compression equipment to re-inject volumes of migrating reservoir gas.

Comment date: October 11, 1991, in accordance with Standard Paragraph F at the end of the notice.

7. Kansas Gas Supply Corp.

[Docket No. CP91–3090–000]

Take notice that on September 13, 1991, Kansas Gas Supply Corporation (Kansas Gas), 14000 Quail Springs Parkway, Oklahoma City, Oklahoma 73134, filed in Docket No. CP91–3090–000 an application pursuant to section 7(c) of the Natural Gas Act and § 284.224 of the Commission's Regulations for a certificate of public convenience and necessity for blanket authorization to engage in the sale, transportation or assignment of natural gas in interstate commerce as if Kansas Gas were an intrastate pipeline as defined in subparts C, D and E of part 284 of the Commission's Regulations, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Kansas Gas states that it owns and operates a 586-mile pipeline system extending from Ford, Kiowa and Comanche Counties to Sedgwick County, Kansas, engaging in the transportation and sale of natural gas as an intrastate pipeline. It is also stated that pursuant to the authority of the Kansas Corporation Commission, gas has been transported through the Kansas Gas pipeline system, from west to east, for delivery and sale by Kansas Gas to industrial users and to two local distribution companies, Kansas Gas and Electric Company and Kansas Power and Light Company. It is further stated that in 1988 Kansas Gas commenced transportation service pursuant to section 311(a)(2) of the NGPA under agreements with producers, each on behalf of an interstate pipeline, either Williams Natural Gas Company or Panhandle Eastern Pipeline Company. In addition, Kansas Gas states that in a May 1, 1989, order, 47 FERC ¶ 62,123, the Commission granted Kansas Gas an adjustment from § 284.123(b)(1)(ii) of the Commission's Regulations so that it could use its existing intrastate transportation rate as the transportation component of the rate charged for service provided under section 311 of the NGPA.

Kansas Gas states that it now proposes to purchase gas for its system supply from Northern Natural Gas Company (Northern) and to operate as a Hinshaw pipeline within the meaning of § 284.224(h)(1) of the Commission's Regulations. Kansas Gas further states that it has contracted to purchase gas from Northern and that Northern has filed for certificate authority to allow the sale in Docket No. CP91–3081–000. In addition, Kansas Gas requests that its blanket certificate pursuant to § 284.224 of the Commission's Regulations be effective upon the purchase of gas by Kansas Gas from Northern, so that it may continue to transport gas and engage in other activities pursuant to subparts C, D and E of Part 284 of the Regulations.

Kansas Gas states that it will charge the same rate as herefore approved for its existing transportation service until such time as any new rate may be established with the Kansas Corporation Commission. In addition, Kansas Gas states that it agrees to comply with the conditions set forth in § 284.224(e) of the Regulations.

Comment date: October 11, 1991, in accordance with Standard Paragraph F at the end of this notice.

8. Florida Gas Transmission Co.

[Docket Nos. CP91–3079–000, CP91–3080–000]

Take notice that Florida Gas Transmission Company, 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188, (Applicant) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket 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.[3]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

Comment date: November 4, 1991, in accordance with Standard Paragraph G at the end of this notice.

[3] These prior notice requests are not consolidated.

Docket number (date filed)	Shipper name (type)	Peak day, average day, annual MMBtu	Receipt [1] points	Delivery points	Contract date rate schedule service type	Related docket, start up date
CP91-3079-000 (9-13-91)	Enron Industrial Natural Gas Company	250,000 187,500 91,250,000	Various	Various	PTS-1; Interruptible.	ST91-9947 8-1-91
CP91-3080-000 (9-13-91)	Tampa Electric Company	771 578 281,490	Various	FL	PTS-1; Interruptible.	ST91-10183 8-1-91

[1] Offshore Louisiana and offshore Texas are shown as OLA and OTX

9. Texas Gas Transmission Corp.

[Docket No. CP91-3094-000]

Take notice that on September 16, 1991, Texas Gas Transmission Corporation (Texas Gas), P.O. Box 1160, Owensboro, Kentucky 42302, filed in Docket No. CP91-3094-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to add a new delivery point for service to Western Kentucky Gas Company (WKG) in Lyon County, Kentucky, under Texas Gas' blanket certificate issued in Docket No. CP82-407-000 pursuant to section 7 of the NGA, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Texas Gas states that it makes sales of natural gas to WKG, an existing customer, pursuant to a service agreement dated August 1, 1991. It is asserted that the new delivery point would enable WKG to serve the Western Kentucky Correctional Complex, a new prison facility to be constructed 3.5 miles south of Fredonia, Kentucky. It is estimated that Texas Gas would utilize the new delivery point to deliver up to 250 MMBtu equivalent of natural gas on a peak day and 25,000 MMBtu equivalent on an annual basis. It is stated that these deliveries are within WKG's currently authorized contract demand and can be accomplished without detriment to Texas Gas' other customers.

Comment date: November 4, 1991, in accordance with Standard Paragraph G at the end of this notice.

10. Williston Basin Interstate Pipeline Co.

[Docket No. CP91-3111-000]

Take notice that on September 17, 1991, Williston Basin Interstate Pipeline Company (Williston Basin), suite 200, 304 East Rosser Avenue, Bismarck, North Dakota 58501, filed in Docket No. CP91-3111-000 a request pursuant to §157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to abandon three sales taps and appurtenant facilities located in Williams County, North Dakota, under the certificate issued in Docket No. CP82-487-000, *et al.*, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

It is stated that Montana-Dakota Utilities Co. (Montana-Dakota) has advised Williston Basin that it no longer requires service through the above-mentioned sales taps located in Williams County, North Dakota, because its end-use customers will now receive service through extensions of Montana-Dakota's distribution gas lines It is further stated that the proposed abandonment will not affect Williston Basin's peak day or annual sales to Montana-Dakota.

Comment date: November 4, 1991, 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 Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 91-23425 Filed 9-27-91; 8:45 am]

BILLING CODE 6717-01-M

Federal Energy Regulatory Commission

[Docket No. TQ92-2-31-000]

Arkla Energy Resources Filing of Revised Tariff Sheets Reflecting Quarterly PGA Adjustment

September 23, 1991.

Take notice that on September 16, 1991, Arkla Energy Resources (AER), a division of Arkla, Inc., tendered for filing the following revised tariff sheets to become effective October 1, 1991.

Second Revised Volume No. 1:

Seventh Revised Sheet No. 11
Seventh Revised Sheet No. 16

Original Volume No. 3:

Fifteenth Revised Sheet No. 185.1

AER states that the tariff sheets reflect AER's second quarterly PGA filing made subsequent to its annual PGA effective April 1, 1991 under the Commission's Order Nos. 483 and 483–A.

AER further states that the filing is being resubmitted due to the rejection of AER's original filing in Docket No. TQ92–1–31–000 by Commission order dated September 10, 1991 which required AER to eliminate duplicated sequence numbers from its electronic medium.

AER also requests any necessary waivers to allow the rates to become effective October 1, 1991.

AER states that the proposed changes reflect a decrease in AER's system cost of $172,215 and would decrease its revenue from jurisdictional sales and service by $1,244 for the PGA period of October, November and December 1991 as adjusted.

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 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 30, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 91–23422 Filed 9–27–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER91–549–000]

Entergy Services, Inc.; Filing

September 23, 1991.

Take notice that on August 27, 1991 Entergy, Services Inc. tendered for filing an Addendum to the Power Coordination, Interchange, and Transmission Agreement between the City of Osceola, Arkansas and Arkansas Power and Light Company. In addition, on August 28, 1991 Entergy Services, Inc. tendered for filing an Addendum to the Power Agreement between the City of North Little Rock, Arkansas and Arkansas Power & Light Company.

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 18 CFR 385.214). All such motions or protests should be filed on or before October 3, 1991. 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. 91–23426 Filed 9–27–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ES91–49–000]

MDU Resources Group, Inc.; Application

September 18, 1991.

Take notice that on September 16, 1991 MDU Resources Group, Inc. ("Applicant") filed an application with the Federal Energy Regulatory Commission pursuant to section 204 of the Federal Power Act seeking an order (a) authorizing the issuance of up to $30 million of promissory notes due no later than December 31, 1994 and (b) authorizing exemption from the Commission's competitive bidding requirements.

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 October 15, 1991. Protests will be considered by the Commission 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 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. 91–23427 Filed 9–27–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM92–1–42–000]

Transwestern Pipeline Co.; Proposed Changes in FERC Gas Tariff

September 23, 1991.

Take notice that Transwestern Pipeline Company ("Transwestern") on September 9, 1991 tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets:

Effective October 1, 1991

88th Revised Sheet No. 5
51st Revised Sheet No. 6
14th Revised Sheet No. 37

The above referenced tariff sheets are being filed to adjust Transwestern's Annual Charge Adjustment (ACA) pursuant to section 23 of General Terms and Conditions of Transwestern's FERC Gas Tariff, Second Revised Volume No. 1. The adjustment of the ACA Surcharge is determined each fiscal year pursuant to the Commission's Order No. 472. The ACA Surcharge of $0.0023/dth as determined by the Commission on July 26, 1991, reflects an increase of $0.0001/dth from the currently effective ACA Surcharge of $0.0022/dth. Transwestern herein respectfully requests that the revised ACA Surcharge become effective October 1, 1991.

Transwestern requested any waiver of any Commission Regulation and its tariff provisions, especially § 154.22 of the Commission's Regulations, the notice requirements, as may be required to allow the tariff sheets referenced above to become effective on October 1, 1991.

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 September 30, 1991. 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. 91-23429 Filed 9-27-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-223-000]

Trunkline Gas Co.; Proposed Changes in FERC Gas Tariff

Take notice that Trunkline Gas Company (Trunkline) on September 17, 1991 tendered for filing the revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1, as set forth in appendix A attached to the filing.

Trunkline proposes that these sheets become effective October 17, 1991.

Trunkline states that the purpose of this general tariff filing is to reflect revisions to Trunkline's Rate Schedules PT-Interruptible, PT-Firm, SAS, UTAP, as well as to the respective Forms of Transportation Agreement and Form of Storage Service Agreement of its FERC Gas Tariff, Original Volume No. 1. These changes specifically include revisions to: (1) The Applicability and Character of Service provisions under Rate Schedule PT-Firm, and the General Terms and Conditions and respective Forms of Service Agreement for Rate Schedules PT-Interruptible and PT-Firm to provide for secondary firm points of receipt; (2) section 6.9 of the General Terms and Conditions under Rate Schedule PT-Firm to provide that the payment which accompanies a request for firm transportation service be the lesser of one month's reservation charge or $10,000; (3) article 2 of the respective Forms of Transportation Agreement under Rate Schedules PT-Interruptible and PT-Firm to clarify that Transporter or Shipper must provide written notice in order to terminate a transportation agreement; (4) section 6.13 of the General Terms and Conditions of Rate Schedule PT-Firm to allow changes to primary firm points of receipt upon 30 days notice using its electronic customer interface system; (5) section 7.3 of Rate Schedule UTAP to provide a 30 day limitation for execution of a UTAP Service Agreement; (6) the Statements and Payments provisions of Rate Schedules PT-Interrruptible, PT-Firm, SAS and UTAP to require that Trunkline be informed of billing errors in writing; and (7) the respective sections 6.9 of the General Terms and Conditions and the Forms of Transportation Agreement for Rate Schedules PT-Interruptible and PT-Firm and the Form of Storage Service Agreement for Rate Schedule SAS to update Trunkline's mailing address, phone numbers and FAX numbers.

Trunkline states that a copy of its filing were served on all affected customers subject to the tariff sheets and applicable state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 30, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-23430 Filed 9-27-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA90-1-11-005]

United Gas Pipe Line Co.; Filing of Revised Tariff Sheets

September 23, 1991.

Take notice that on September 18, 1991 United Gas Pipe Line Company (United) tendered for filing, as part of its FERC Gas Tariff, First Revised Volume No. 1, the following corrected tariff sheets effective October 1, 1989:

First Revised Volume No. 1

Substitute Ninetieth Revised Sheet No. 4
Substitute Ninth Revised Sheet No. 4.1
Substitute Ninth Revised Sheet No. 4-G

United states that the above referenced tariff sheets are being filed for tariff maintenance purposes only. On June 23, 1990 in Docket No. TA90-1-11-003 the Commission accepted substitute original tariff sheets to United's Second Revised Volume No. 1, effective October 1, 1989. The original tariff sheets in Second Revised Volume No. 1, however, did not become effective until November 30, 1989. The above referenced First Revised Volume No. 1 tariff sheets reflect the same surcharge as accepted in Docket No. TA90-1-11-003, but are being filed in First Revised Volume No. 1 as is appropriate for an October 1, 1989 effective date.

In addition, United requests that the Second Revised Volume No. 1 tariff sheets accepted in the June 23 Order be made effective November 30, 1989, the effective date of it's superseded sheets.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before September 30, 1991. 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. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-23431 Filed 9-27-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EF91-5031-000]

Western Area Power Administration, Inc.; Filing

September 23, 1991.

Take notice that on September 3, 1991, the Assistant Secretary for Conservation and Renewable Energy of the Department of Energy, by Rate Order No. WAPA-50, did confirm and approve on an interim basis, to be effective on the first day of the first full billing period beginning on or after October 1, 1991, Western Area Power Administration's (Western's) power rate Schedules P-SED-F5 and P-SED-FP5 for firm power service and firm peaking power service from the Pick-Sloan Missouri Basin Program-Eastern Division (P-SMBP-ED).

Rate Schedules P-SED-F5 and P-SED-FP5 will be in effect pending the Federal Energy Regulatory Commission's (FERC) approval of them or of substitute rates on a final basis for a 5-year period, ending September 30, 1996, or until superseded.

The fiscal year (FY) 1990 power repayment study indicated that the existing rates do not yield sufficient revenue to satisfy the cost-recovery criteria through the study period. The revised rate schedules will yield adequate revenue to satisfy these criteria.

P-SMBP—Western Division

The rate schedules for the P-SMBP—Western Division are associated with the Loveland Area Projects (LAP) rate and are the subject of a separate rate adjustment, which is documented in Rate Order No. WAPA-51. The LAP rate adjustment is also scheduled to go into

effect on the first day of the first full billing period beginning on or after October 1, 1991.

The Administrator of Western certifies that the rates are consistent with applicable law and that they are the lowest possible rates consistent with sound business principles. The Assistant Secretary for Conservation and Renewable Energy of the Department of Energy states that the rate schedules are submitted for confirmation and approval on a final basis for a 5-year period beginning October 1, 1991, and ending September 30, 1996, pursuant to authority vested in the FERC by Delegation Order No. 0204–108, as amended.

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 18 CFR 385.214). All such motions or protests should be filed on or before October 3, 1991. 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. 91–23432 Filed 9–27–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EF91–5181–000]

Western Area Power Administration; Filing

September 23, 1991.

Take notice that on September 3, 1991, the Assistant Secretary for Conservation and Renewable Energy of the Department of Energy (DOE), by Rate Order No. WAPA–51, did confirm and approve on an interim basis, to be effective on the first day of the first full billing period beginning on or after October 1, 1991, Western Area Power Administration's (Western) firm power rate Schedule L–F3 for the Loveland Area Projects (LAP).

Rate Schedule L–F3 will be in effect pending the Federal Energy Regulatory Commission's (FERC) approval of these or substitute rates on a final basis for a 5-year period ending September 20, 1996, or until superseded.

The fiscal year (FY) 1990 power repayment studies indicated that the existing rate does not yield sufficient revenue returns to satisfy the cost-recovery criteria through the appropriate study periods. Rate Schedule L–F3 will yield adequate revenues to satisfy these criteria.

The Administrator of Western certifies that the rates are consistent with applicable law and that they are the lowest possible rates to customers consistent with sound business principles. The Assistant Secretary for Conservation and Renewable Energy of DOE states that the rate schedule is submitted for confirmation and approval on a final basis for a 5-year period, effective the first day of the first full billing period beginning on or after October 1, 1991, and ending September 30, 1996, pursuant to the authority vested in the FERC by Delegation Order No. 0204–108.

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 18 CFR 385.214). All such motions or protests should be filed on or before October 3, 1991. 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. 91–23433 Filed 9–27–91; 8:45 am]

BILLING CODE 6717–01–M

Office of Fossil Energy

[FE Docket No. 91–05–NG]

Northern Natural Gas Co.; Order Granting Authorization To Import Natural Gas From Canada

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of an order granting long-term authorization to import natural gas from Canada.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Northern Natural Gas Company authority to import from Western Gas Marketing Limited up to 50,000 Mcf per day of Canadian natural gas through March 31, 1996. The gas would be imported near Emerson, Manitoba, and be transported from that point through the pipeline facilities of Great Lakes Gas Transmission Limited Partnership.

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, September 20, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91–23490 Filed 9–27–91; 8:45 am]

BILLING CODE 6450–01–M

Office of Hearings and Appeals

Cases Filed During the Week of August 9 Through August 16, 1991

During the week of August 9 through August 16, 1991, the appeals and applications for exception or other relief listed in the appendix to this notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: September 24, 1991.

George B. Breznay,

Director, Office of Hearings and Appeals.

List of Cases Received by the Office of Hearings and Appeals

[Week of August 9 through August 16, 1991]

Date	Name and location of applicant	Case No.	Type of submission
8/13/91	Gulf/Henley's Gulf Atlantic Beach, FL	RR300-100	Request for Modification/Rescission in Gulf Refund Proceeding. If Granted: The 6/10/91 Decision and Order (Case No. FR300-6612) issued to Henley's Gulf would be modified regarding the firm's Application for Refund submitted in the Gulf refund proceeding.
8/13/91	Robert D. Carrell, Richland, WA	LFA-140	Appeal of an Information Request Denial. If Granted: The 7/22/91 Freedom of Information Request issued by the Richland Operations Office would be rescinded, and Robert D. Carrell would receive access to a copy of the Westinghouse Hanford Company security file.
8/13/91	Texaco/H & B Texaco Service, Wichita Falls, TX	RR321-77	Request for Modification/Rescission in the Texaco Refund Proceeding. If Granted: The 8/7/90 Decision and Order (Case Nos. RF321-326 & RF321-891) would be modified regarding the firm's Application for Refund submitted in the Texaco refund proceeding.
8/16/91	Harold H. Johnson, Gresham, OR	LFA-1041	Appeal of an Information Request Denial. If Granted: The 8/8/91 Freedom of Information Request Denial issued by the Division of Personnel Management would be rescinded and Harold H. Johnson would receive access to certain requested records.

Refund Applications Received

[Week of August 9 to August 16, 1991]

Date	Name of firm	Case number
8/4/91	West Pike Shell	RF315-10151
8/9/91 thru 8/16/91	Texaco refund applications received	RF321-16376 thru RF321-16442
8/9/91 thru 8/16/91	Crude Oil applications received	RF272-89554 thru RF272-89605
8/9/91 thru 8/16/91	Gulf Oil refund Applications received	RF300-17401 thru RF300-17476
8/12/91	Suburban Motor Freight, Inc.	RF304-12423
8/13/91	City of Springfield	RC272-133
8/13/91	George L. Wurnig	RC272-134
8/15/91	Independent School Dist #56	RC272-136
8/15/91	Hammond & Taylor Inc.	RC304-12424
8/15/91	Magnatex Corporation	RF315-10152
8/12/91	Little Beaver Automotive Service	RF341-5
8/14/91	Fred L. Morgan Farm	RC272-135
8/14/91	Texaco Inc	RF340-11

[FR Doc. 91-23493 Filed 9-27-91; 8:45 am]

BILLING CODE 6450-01-M

Cases Filed During the Week of August 23 Through August 30, 1991

During the week of August 23 through August 30, 1991, the appeal and the applications for exception or other relief listed in the appendix to this notice were filed with the Office of Hearings and Appeals of the Department of Energy. A submission inadvertently omitted from an earlier list also has been included.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: September 24, 1991.

George B. Breznay,

Director, Office of Hearings and Appeals.

List of Cases Received by the Office of Hearings and Appeals

[Week of August 23 through August 30, 1991]

Date	Name and location of applicant	Case No.	Type of submission
8/26/91	Gulf/Potomac Edison Company, Hagerstown, Maryland.	RR300-107	Request for Modification/Rescission in the Gulf Refund Proceeding. If Granted: The 11/29/88 Decision and Order (Case No. RF300-5260) issued to Potomac Edison Company would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of August 23 through August 30, 1991]

Date	Name and location of applicant	Case No.	Type of submission
8/26/91	Oswego Oil Service Corporation, Hempstead, New York.	LEE-0027	Exception to the Reporting Requirements. If Granted: Oswego Oil Service Corporation would not be required to file Form EIA-782B, "Reseller/Retailer's Monthly Petroleum Product Sales Report."
8/26/91	Quad States Distributing, Inc., Miami, Oklahoma	LEE-0026	Exception to the Reporting Requirements. If Granted: Quad States Distributing, Inc. would not be required to file Form EIA-782B "Reseller/Retailer's Monthly Petroleum Products Sales Report."
8/27/91	Texaco/Haleakala Dairy, Memphis, Tennessee	RR321-78	Request for Modification/Rescission in the Texaco Refund Proceeding. If Granted: The 7/11/91 Decision and Order (Case Nos RF321-15839 & RF321-15139) issued to Haleakala Dairy would be modified regarding the firm's application for refund submitted in the Texaco refund proceeding.
8/29/91	Gulf/Lewis Dukes Gulf, Cordova, Tennessee	RR300-108	Request for Modification/Rescission in the Gulf Refund Proceeding If Granted: The 1/24/91 Dismissal Letter (Case No. RF300-11645) issued to Lewis Dukes Gulf would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.
8/29/91	Exxon/Karas Car Wash., Inc., Pittsburgh, Pennsylvania.	RR307-13	Request for Modification/Rescission in the Exxon Refund Proceeding. If Granted: The 4/2/91 Decision and Order (Case No. RF307-10178) issued to Karas Car Wash, Inc. would be modified regarding the firm's application for refund submitted in the Exxon refund proceeding.
8/29/91	Standard Oil Co. (Indiana)/South Carolina, Charleston, South Carolina.	RM251-255	Request for Modification/Rescission in the Standard Oil Co. (Indiana) Second Stage Refund Proceeding. If Granted: The 3/15/90 Decision and Order (Case No. RQ251-550) issued to South Carolina would be modified regarding the state's application for refund submitted in the Standard Oil Co. (Indiana) second stage refund proceeding.
8/30/91	Charles R. McCarter Galata, Montana	LFA-0143	Appeal of an Information Request Denial. If Granted: Charles R McCarter would receive a waiver of all fees incurred in the processing of his Freedom of Information Request for copies of certain photos and negatives from 1943 to assist him in completion of his project on "Day's Pay."

REFUND APPLICATIONS RECEIVED

[Week of August 23 through August 30, 1991]

Date received	Name of refund proceeding/Name of refund applicant	Case number
8/1/91	Vickers/Kansas	RQ1-575
8/27/91	Texas City Refining, Inc	RF339-4
8/27/91	Central Butane Gas Co	RF340-13
8/28/91	G.A. Eddy & Sons, Inc	RF340-14
8/28/91	Knickerbocker Bed Co	RF341-7
8/28/91	Salinas Valley Oil Company	RF315-10154
8/29/91	Starr Gas Co	RF315-10155
8/29/91	Eddy Kehler	RF315-10156
8/23/91 thru 8/30/91	Texaco refund applications received	RF321-16737 thru RF321-16779
8/23/91 thru 8/30/91	Crude Oil Refund applications received	RF272-89617 thru RF272-89671
8/23/91 thru 8/30/91	Atlantic Richfield applications received	RF304-12426 thru RF304-12495
8/23/91 thru 8/30/91	Gulf Oil refund applications received	RF300-17480 thru RF300-17549

[FR Doc. 91-23494 Filed 9-27-91; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders; Week of June 24 Through June 28, 1991

During the week of June 24 through June 28, 1991, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contain a list of submissions that were dismissed by the Office of Hearing and Appeals.

Appeals

James L. Schwab, 6/25/91; LFA-0119

James L. Schwab filed an Appeal from a determination issued by the DOE's Albuquerque Operations Office (AOO) of a Request for Information under the Freedom of Information Act. Mr. Schwab, a former employee of a DOE subcontractor, requested information concerning the AOO's investigation into the termination of his employment. Because the Appellant had requested a copy of the AOO's final Panel Report in an earlier FOIA request, the AOO determined that his second request was

only for documents relating to that Report. In considering the Appeal, the DOE determined that the AOO's interpretation of the Appellant's request was unreasonably narrow and that his second request was clearly seeking material beyond the Panel Report. The DOE also found that the Appellant had provided sufficient evidence which indicated that additional responsive material may exist. For these reasons, the AOO's search for responsive documents was inadequate and was not reasonably calculated to uncover the materials sought by the Appellant. Accordingly, the DOE granted Schwab's Appeal, and remanded the matter to the AOO to make a new search and determination on the Appellant's request.

John H. Seehuus, 6/24/91; LFA–0131

John M. Seehuus filed an Appeal from a partial denial by the DOE's Operation Division "B" of the Office of Placement and Administration (OPADB) of a Request for Information which he had submitted under the Freedom of Information Act (FOIA). In considering the Appeal, the DOE found that the OPADB had conducted an adequate search for responsive records and the Appellant was seeking information broader than that covered by his original request. Accordingly, the Appeal was denied.

The Oak Ridger, 6/26/91; LFA–0123

The Oak Ridger filed a Motion for Reconsideration of a Decision and Order issued to it by the DOE's Office of Hearings and Appeals. The Decision affirmed, in part, the Oak Ridge Operations Office's denial of the Oak Ridger's request under the Freedom of Information Act for a document entitled "Issues for Considerations Prior to Negotiations" (Issues Document). In its Motion, the Oak Ridger asserted that in a separate legal action, *Phoenix Engineering, Inc.* v. *MK-Ferguson of Oak Ridge Co.*, a U.S. District Court Judge held that the Issues Document was not a predecisional document and issued an Order granting discovery of the Issues Document. In considering the Motion, the DOE found that the Judge had also issued a Protective Order which restricted dissemination of the document to the parties of the *Phoenix* litigation. The DOE thus determined that the Protective Order barred it from releasing the Issues Document to the Oak Ridger pursuant to the FOIA. Consequently, the DOE denied the Motion.

Implementation of Special Refund Procedures

Good Hope Refineries, 6/28/91, LFX–0002

The DOE issued a Decision and Order implementing special refund procedures to distribute $9,000,000 and accrued interest, remitted to the DOE by the successor to Good Hope Refineries (Good Hope) in settlement of alleged violations of petroleum price and allocation regulations. In an earlier proceeding, DOE distributed $1,550,000 obtained in partial satisfaction of Good Hope's obligations under a July 31, 1979, Consent Order. Because it sought protection under Chapter 11 of the U.S. Bankruptcy Code, Good Hope never completed its scheduled payments under the Consent Order. See *Good Hope Refineries*, 13 DOE ¶ 85,105 (1985). However, the firm emerged from bankruptcy on July 29, 1990, and paid DOE the additional $9,000,000. The DOE determined that it would distribute the newly received installment of Good Hope settlement monies through a refund proceeding in accordance with the DOE regulations codified at 10 CFR, part 205, subpart V. The refund monies will be disbursed in the following stages: refunds to purchasers of regulated Good Hope petroleum products in the first stage, and transfer of monies remaining after the payment of all eligible first-stage claims to the states as mandated by the Petroleum Overcharge Distribution and Restitution Act of 1986. In this proceeding, each Good Hope customer that was listed in the Economic Regulatory Administration (ERA) audit file will have the option to apply for a refund based on either its percentage share of alleged overcharges determined by the ERA, or a volumetric amount calculated from its purchases of Good Hope products during the consent order period.

Refund Applications

Heron Lake-Okabena School District, et al., 6/25/91, RF272–78708, et al.

The DOE issued a Decision and Order granting a refund from crude oil overcharge funds to 17 school districts represented by the filing service, Petroleum Funds, Inc. (Petroleum Funds). The DOE determined that, absent corroborative information from the applicants, Petroleum Funds' estimation method would not be accepted. The applicants provided additional information based on current records. The DOE granted the applications based on the adjusted claims. The total of the refunds granted in this Decision is $4,633.

McDonnell Douglas Corporation, 6,25/91, RF272–64663

The DOE issued a Decision and Order granting an Application for Refund filed by the McDonnell Douglas Corporation (MDC) in the Subpart V crude oil overcharge refund proceeding. MDC filed a refund based on its purchases of fuel oil, jet fuel, aviation gasoline, automobile gasoline, diesel fuel, propane, and coal slurry during the period August 19, 1973 through January 27, 1981. The DOE granted MDC a refund for all its purchases except those of coal slurry. The DOE found that MDC was not eligible to receive a refund for this product, a blend of 40 percent oil and 60 percent coal, because it is more than 50 percent coal and coal is not refined from crude oil.

Quantum Chemical Corporation/Phillips 66, 6/24/91, RF330–1

The DOE granted a refund of $6,445 to Phillips 66, based on its approved purchases of 78,500,000 gallons of Quantum Chemical Corporation refined petroleum products. The refund was granted on the basis of a presumption of injury. Since Phillips 66 made no demonstration that it absorbed the alleged Quantum overcharges, firms which purchased Phillips motor gasoline during the period of February 1974 through December 1979 may apply as indirect purchasers to receive a portion of the Quantum consent order fund.

Quantum Chemical Corporation/Yam City Oil & Gas Co., et al., 6/28/91, RF330–4, et al.

The DOE granted eight Applicants a total refund amount of $3,951 in the Quantum Chemical Corporation special refund proceeding. Each of the Applicants had purchased a Quantum product indirectly through Phillips 66. The applications were granted on the basis of the small claims presumption of injury.

Sauvage Gas Company, Inc./John E. Jones Oil Company, Inc., et al., 16/26/91, RF308–13 et al.

The DOE issued a Decision and Order denying four Applications for Refund in the Sauvage Gas Company, Inc. (Sauvage) special refund proceeding. The four applicants were preliminarily identified as spot purchasers of Sauvage petroleum products, due to the sporadic patterns displayed on their purchase schedules. The applicants replied to these preliminary findings by submitting letters, in which they argued that they were not spot, but regular, purchasers from Sauvage. The DOE determined that these arguments were unconvincing, since they did not demonstrate that any

of the applicants were regular purchasers. Since the applicants did not show that they were regular purchasers from Sauvage or attempt to rebut the spot purchaser presumption of non-injury, their applications were denied.

Shell Oil Company/U.S. Navy Exchange, et al., 16/26/91, RF315–1532, et al.

The DOE issued a Decision and Order granting six refund applications filed by the U.S. Navy Exchange in the Shell Oil Company special refund proceeding. The Navy Exchange provides military personnel and their dependents with merchandise and services at a reduced price. All of the profits generated from the sale of merchandise or services by the Navy Exchange are used for military morale, welfare, and recreation (MWR) programs. The DOE determined that the Navy Exchange, which purchased a total of 47,253,677 gallons, should receive a full volumetric refund, stating that because of the unique way in which the Navy Exchange established its prices, MWR programs and the military personnel who benefit from the MWR programs would have absorbed any overcharges suffered by the Navy Exchange. Accordingly, the Navy Exchange received a refund of $14,636 ($10,679 in principal plus $3,957 in interest).

Texaco Inc./Lewis G. Landress Consignee, et al., 6/24/91, RF321–7005, et al.

The DOE granted refunds to five consignees in the Texaco Inc. special refund proceeding. The five applications were granted under the appropriate presumptions of injury and the refunds totaled $13,300.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Alton Selby's Service Station et al.	RF272–84097	06/24/91
Arch Mineral Corporation.	RF272–9491	06/28/91
Arch Mineral Corporation.	RD272–9491	
Arizona Department of Public Safety.	RF272–73536	06/27/91
Atlantic Richfield Co./ Cecil's Arco et al.	RF304–4178	06/28/91
Atlantic Richfield Co./ T.J. Daley Transfer, Inc.	RF304–4739	06/28/91
Bruce and Bill's Arco	RF304–4802	
Lindburg Oil Company	RF304–8069	
Big Chief Roofing Company.	RF272–60244	06/26/91
Big Chief Roofing Company.	RD272–60244	
Daingerfield Mfg Company.	RF272–60381	
Daingerfield Mfg Company.	RD272–60381	
Charles E. Horton et al.	RF272–73247	06/28/91
Citronelle-Mobile Gathering/Orange & Rockland Utilities, Inc.	RF336–2	06/27/91
Georgia Power Co.	RF336–3	
Clifford Haugen	RC272–123	06/26/91
Decatur County School District.	RF272–78759	06/27/91
Empire Gas Corporation/Wilma Claudine Jenkins et al.	RF335–1	06/25/91
Exxon Corporation/ Federal Service Station, Inc..	RF307–10180	06/28/91
Farmers Union Oil Co. et al.	RF272–60921	06/27/91
Gayman Trawlers, Inc. et al.	RF272–58119	06/24/91
Green Forest School District.	RF272–78763	06/25/91
Gulf Oil Corporation/ Bolick's Gulf.	RF300–17078	06/27/91
Gulf Oil Corporation/ Camburn-McCord Oil Company.	RF300–11299	06/24/91
Gulf Oil Corporation/ F.O. Day Bituminous Company et al.	RF300–12443	06/27/91
Gulf Oil Corporation/ Haney Brothers Gulf Service.	RF300–10524	06/26/91
Gulf Oil Corporation/ Lumberton Wag-A-Bag et al.	RF300–13600	06/26/91
Gulf Oil Corporation/ Tony's Gulf et al.	RF300–13901	06/26/91
Gulf Oil Corporation/ Woodson's Market et al.	RF300–13000	06/26/91
LaClede Gas Company.	RF272–9878	06/26/91
Nettleton School District.	RF272–78752	06/25/91
Oswald Marcher et al	RF272–67945	06/27/91
Shell Oil Company/ Bud's Shell Service et al.	RF315–84	06/28/91
Shell Oil Company/ Elifaz Sanchez et al.	RF315–9009	06/26/91
State of Iowa	RF272–65199	06/24/91
Iowa Department of Transportation.	RF272–65200	
State of South Carolina.	RF272–44344	06/26/91
Texaco Inc./Akers Motor Lines, Inc.	RF321–6168	06/26/91
Yellow Cab, Inc.	RF321–6825	
Southern California Edison Co.	RF321–6865	
Texaco Inc./ Chamblee's Texaco et al.	RF321–964	06/28/91
Texaco Inc./Gal Tex Inc. et al.	RF321–4544	06/26/91
Texaco Inc./Industrial Truck Stop Inc. et al.	RF321–8700	06/24/91
Texaco Inc./Lake Placid Village, Inc. et al.	RF321–8009	06/24/91
Time Oil Company/ Lilyblad Petroleum, Inc.	RF334–1	06/28/91
Time Oil Company/ Olympia Oil & Wood Products Co., Inc.	RF334–10	06/28/91

Dismissals

The following submissions were dismissed:

Name	Case No.
Al's Gulf	RF300–13157
Audubon Community Schools	RF272–81222
Baches Texaco	RF321–780
Bartletts Arco	RF304–3685
Berkshire Hills Regional School District.	RF272–82537
Bill's Texaco	RF321–3438
Board of Education of Charles County.	RF272–81519
Borough of Greenville, Pa	RF272–83044
Boyd's Texaco	RF321–877
Brownsfield Texaco	RF321–897
Cal's Texaco Service	RF321–15523
Camanche Community School District.	RF272–80972
Cambridge Unit #227	RF272–81774
City of Delano, CA	RF272–83268
City of Pembroke Pines, FL	RF272–83494
City Public Service	RF326–292
Clarence W. Heidenescher	RF300–16454
Conejo Valley Unified School District.	RF272–83719
Craft's Texaco	RF321–2230
Crawford School Department	RF272–81733
Donati Repair Service	RF300–15979
Driftwood Texaco	RF321–10388
East Lyme School District	RF272–81196
Erie City School District	RF272–83458
Flowing Wells Unified District	RF272–80236
Gary Automotive	RF304–3647
Greenbank's Arco #3	RF304–9679
Hendon Gulf	RF300–16374
Honeoye Falls-Lima School District.	RF272–80989
Iraan-Sheffield ISD	RF272–84148
Jerry's Texaco	RF321–13649
Leigh Community School	RF272–83709
McKee Colonial Texaco	RF321–5682
Mohr Oil Company	RF300–15837
Mother Shell	RF315–8652
Mount Vernon City School District	RF272–80807
New York State Police	RF272–57101
Palmer Public Schools	RF272–81304
Pleasant Valley Elementary	RF272–81464
PS Arco	RF304–3676
R&J Getty	RF321–6328
S.A.D. #27 Ft. Kent	RF272–79434
San Joaquin Mosquito Abatement District.	RF321–15593
Santa Fe School District	RF272–82446
Smith Gulf	RF300–16427
Thomas' Gulf	RF300–11018
Town of Easton School Dept	RF272–80596
Town of New Haven, CT	RF272–83500
Trotter Texaco	RF321–8410
W.W. Schrank	RF300–16624
W.W. Schrank	RF300–13641

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in Energy Management: Federal Energy

Guidelines, a commercially published loose leaf reporter system.

Dated: September 24, 1991.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 91-23495 Filed 9-27-91; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4013-9]

National Drinking Water Advisory Council; Request for Nomination of Members

The U.S. Environmental Protection Agency (EPA) invites all interested persons to nominate qualified individuals to serve as members of the National Drinking Water Advisory Council. This Advisory Council was established to provide practical and independent advice, consultation and recommendations to the Agency on the activities, functions and policies related to the implementation of the Safe Drinking Water Act as amended. The Council consists of fifteen members, including a Chairperson. Five members represent the general public; five members represent appropriate state and local agencies concerned with water hygiene and public water supply; and five members represent private organizations or groups demonstrating an active interest in the field of water hygiene and public water supply. Each member holds office for a term of three years and is eligible for reappointment. On December 15 of each year, five members complete their appointment. This notice solicits names to fill these five vacancies.

Any interested person or organization may nominate qualified individuals for membership. Nominees should be identified by name, occupation, position, address and telephone number. Nominations must include a current resume providing the nominee's background, experience, and qualifications.

Persons selected for membership will receive compensation for travel and a nominal daily compensation while attending meetings.

Nominations should be submitted to Charlene E. Shaw, Designated Federal Official, National Drinking Water Advisory Council, U.S. Environmental Protection Agency, Office of Ground Water and Drinking Water (WH-550A), 401 M Street, SW., Washington, DC 20460, no later than October 25, 1991. The Agency will not formally acknowledge or respond to nominations.

Dated: September 19, 1991.

James R. Elder,

Director, Office of Ground Water and Drinking Water.

[FR Doc. 91-23496 Filed 9-27-91; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-80015C; FRL-3948-7]

Registration and Agreement for TSCA Section 8(e) Compliance Audit Program Modification

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This Notice, pursuant to sections 15 and 16 of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2601 et seq., announces an extension of the TSCA Section 8(e) Compliance Audit Program ("TSCA Section 8(e) CAP") reporting deadline for submission of information regarding release of chemical substances to and detection of chemical substances in environmental media. The deadline for reporting all other information under the TSCA Section 8(e) CAP remains unchanged at February 28, 1992. This notice also announces that EPA is developing refined guidance concerning the section 8(e) applicability/reportability of information on the release of chemical substances to and detection of chemical substances in environmental media. EPA plans to publish in the **Federal Register**, the proposed guidance refining EPA's March 16, 1978, "Statement of Interpretation and Enforcement Policy; Notification of Substantial Risk" (43 FR 11110) ("TSCA Section 8(e) Policy Statement") concerning reportability of such information and will solicit public comment on the proposed guidance.

DATES: The audit termination date/deadline for reporting of information regarding release of chemical substances to and detection of chemical substances in environmental media is extended to 6 months after publication of final refined reporting guidance. The exact date will appear in the **Federal Register** notice announcing the final refined guidance.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of February 1, 1991 (56 FR 4128), EPA announced the opportunity to register for the TSCA Section 8(e) CAP. The TSCA Section 8(e) CAP is a one-time voluntary compliance audit program developed to obtain outstanding TSCA section 8(e) data and foster compliance with the statutory obligations of TSCA section 8(e).

On April 26, 1991 (56 FR 19514), EPA modified the TSCA Section 8(e) CAP and the Agreement for the TSCA Section 8(e) Compliance Audit Program ("CAP Agreement"). The modifications included extension of the registration and termination dates, the opportunity to petition EPA for a case-by-case extension of the termination date, modifications to the CAP Agreement provisions regarding admission of a violation of TSCA section 8(e) and waiver of right to a hearing, and EPA's development of a TSCA section 8(e) reporting guide.

On June 20, 1991 (56 FR 23458), EPA again modified the TSCA Section 8(e) CAP and the CAP Agreement. The modifications included announcement of the availability of the TSCA section 8(e) reporting guide, extension of the registration date, and the addition of provisions for listing of certain types of previously reportable TSCA section 8(e) information now in EPA's possession. Additionally, EPA determined that the guidance in Part V(b)(1) ("widespread and previously unsuspected distribution in environmental media") and Part V(c) ("emergency incidents of environmental contamination") of the TSCA Section 8(e) Policy Statement needed additional clarification and announced that EPA would review and revise, if necessary, these sections of the TSCA Section 8(e) Policy Statement.

With regard to Parts V(b)(1) and V(c) of the TSCA Section 8(e) Policy Statement, the regulated community was informed that until such time as EPA refined its guidance regarding the types of information on the release of chemical substances to and the detection of chemical substances in environmental media that are reportable under section 8(e) of TSCA, regulatees should focus on the statutory language of TSCA section 8(e) and make a reasonable judgement whether such information is reportable for purposes of the TSCA Section 8(e) CAP as well as ongoing compliance with section 8(e).

II. Modification to the TSCA Section 8(e) Compliance Audit Program

Because refinement of guidance on reportability of information on chemical release/detection in environmental media is underway, EPA is extending the reporting deadline for reporting such information under the ongoing TSCA Section 8(e) CAP to 6 months after publication of final reporting guidance. The Agency anticipates publishing such final guidance in Spring 1992. Thus, to reflect this modification to the TSCA Section 8(e) CAP, an "Addendum" will be sent to all persons registered for the TSCA Section 8(e) CAP and added to all CAP Agreements to read as follows:

Addendum to CAP Agreement

The TSCA Section 8(e) Compliance Audit Program for reporting of information on the release of chemical substances to and detection of chemical substances in environmental media shall terminate 6 months after EPA publishes final refined guidance on such reporting. This modification applies only to reporting of information on the release of chemical substances to and detection of chemical substances in environmental media. The deadline for reporting all other information under the TSCA Section 8(e) CAP remains unchanged at February 28, 1992.

All TSCA Section 8(e) Compliance Audit Program submissions regarding information on the release of chemical substances to and detection of chemical substances in environmental media must be delivered to EPA no later than 6 months after EPA publishes final guidance refining the TSCA Section 8(e) Policy Statement as it pertains to such reporting.

Two Final Reports shall be submitted pursuant to Unit II.C.4 of the CAP Agreement. The first Final Report, meeting the requirements of Unit II.C.4 of the CAP Agreement, must list all studies or reports listed or submitted to EPA by the Regulatee other than those regarding information on the release of chemical substances to and detection of chemical substances in environmental media, and must be submitted no later than February 28, 1992, unless an extension has been granted pursuant to Unit I.E of the CAP Agreement. The second Final Report, meeting the requirements of Unit II.C.4 of the CAP Agreement, must list each study or report listed or submitted to EPA by the Regulatee regarding information on the release of chemical substances to and detection of chemical substances in environmental media, and must be submitted no later than 6 months after EPA publishes final refined guidance on the reporting of such information.

One Consent Agreement and Consent Order referenced in Unit II.B.6 of the CAP Agreement will be presented to the Regulatee. This Consent Agreement and Consent Order will be presented after EPA's receipt of the Final Report regarding information on the release of chemical substances to and detection of chemical substances in environmental media, and will cover all information submitted by the Regulatee under the TSCA Section 8(e) Compliance Audit Program.

III. Section 8(e) Policy Refinement

EPA will, in the near future, be formally offering all interested parties the opportunity to submit written comments on an EPA proposal outlining the types of information concerning the release of chemical substances to and the detection of chemical substances in environmental media that should be considered for immediate reporting under TSCA section 8(e). Further, written comments will be solicited on the specific circumstances, in addition to the reporting exemptions outlined in Part VII of the TSCA Section 8(e) Policy Statement, under which the Agency should consider itself to be adequately and immediately apprised about information concerning the release of chemicals to and the detection of chemicals in environmental media.

IV. Conclusion

EPA believes that the actions described above emphasize the Agency's strong commitment to develop refined guidance for reporting environmental release, environmental detection and environmental contamination information under TSCA section 8(e) and the TSCA Section 8(e) CAP. EPA believes that the extension of the audit termination deadline for reporting of information on the release of chemical substances to and the detection of chemical substances in environmental media will substantially further the goals of the TSCA Section 8(e) CAP. Any further information regarding the TSCA Section 8(e) CAP may be obtained from the contact person noted above.

Dated: September 25, 1991.

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 91-23574 Filed 9-27-91; 8:45 am]

BILLING CODE 6560-50-F

[FRL-4013-8]

Revision of the North Carolina National Pollutant Discharge Elimination System (NPDES) Program To Issue General Permits

AGENCY: Environmental Protection Agency.

ACTION: Notice of Approval of the National Pollutant Discharge Elimination system General Permits Program of the State of North Carolina.

SUMMARY: On September 6, 1991, the Regional Administrator for the Environmental Protection Agency (EPA), Region IV, approved the State of North Carolina National Pollutant Discharge Elimination System General Permits Program. This action authorizes the State of North Carolina to issue general permits in lieu of individual NPDES permits.

FOR FURTHER INFORMATION CONTACT: Jim Patrick, Chief, Permits Section, Facilities Performance Branch, U.S. EPA, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365, 404/347-2913.

SUPPLEMENTARY INFORMATION:

I. Background

EPA regulations at 40 CFR 122.28 provide for the issuance of general permits to regulate discharges of wastewater which result from substantially similar operations, are of the same type wastes, require the same effluent limitations or operating conditions, require similar monitoring, and are appropriately controlled under a general permit rather than by individual permits.

North Carolina was authorized to administer the NPDES permit program in October 1979. Its program as previously approved, did not include provisions for the issuance of general permits. There are several categories which could appropriately be regulated by general permits. For those reasons, the North Carolina Department of Environment, Health & Natural Resources requested a revision of its NPDES program to provide for issuance of general permits. The categories which have been proposed for coverage under the general permits program include: storm water discharges, non-contact cooling water, water filtration plant backwashes, trout farms, and other dischargers which involve substantially similar wastewater and discharges. EPA notes that the North Carolina legislature repealed a provision contained in North Carolina General Statute § 143.215.1(61) regarding filter backwash facilities for swimming pools and spas. Since the

repeal is not effective until October 1, 1991, authority for that class of dischargers is withheld until that date. Each general permit will be subject to EPA review as provided by 40 CFR 123.44. Public notice and opportunity to request a hearing is also provided for each general permit.

II. Discussion

The State of North Carolina submitted, in support of its request, copies of the relevant statues and regulations and proposed regulations. The State also has submitted a statement by the Attorney General certifying, with appropriate citations to the statues and regulations, that the State will have adequate legal authority to administer the general permits program consistent with 40 CFR 123.28. Based upon North Carolina's Program Description and its experience in administering an approved NPDES program, EPA has concluded that the State will have the necessary procedures and resources to administer the general permits program.

Under 40 CFR 123.62, NPDES program revisions are either substantial (requiring publication of proposed program approval in the **Federal Register** for public comment) or non-substantial (where approval may be granted by letter from EPA to the state). EPA has determined that assumption by North Carolina of general permit authority is a non-substantial revision of its NPDES program. EPA has generally viewed approval of such authority as non-substantial because it does not alter the substantive obligations of any discharger under the State program, but merely simplifies the procedures by which permits are issued to a number of point sources.

Moreover, under the approved state program, the State retains authority to issue individual permits where appropriate, and any person may request the state to issue an individual permit to a discharger otherwise eligible for general permit to a discharger otherwise eligible for general permit coverage. While not required under 40 CFR 123.62, EPA is publishing notice of this approval action to keep the public informed of the status of its general permits program approvals.

III. Federal Register Notice of Approval of State NPDES Program or Modifications

The following table provides the public with an up-to-date list of the status of state NPDES permitting authority throughout the country. Today's **Federal Register** notice is to announce the approval of North Carolina's authority to issue general permits.

STATE NPDES PROGRAM STATUS

Approved State NPDES permit program	Approved to regulate Federal facilities	Approved State pretreatment program	Approved State general permits program	
Alabama	10/19/79	10/19/79	10/19/79	06/26/91
Arkansas	11/01/86	11/01/86	11/01/86	11/01/86
California	05/14/73	05/05/78	09/22/89	09/22/89
Colorado	03/27/75	.....	.....	03/04/83
Connecticut	09/26/73	01/09/89	06/03/81	.....
Delaware	04/01/74	.....	.....	.....
Georgia	06/28/74	12/08/80	03/12/81	.....
Hawaii	11/28/74	06/01/79	08/12/83	.....
Illinois	10/23/77	09/20/79	.....	01/04/84
Indiana	01/01/75	12/09/78	.....	04/02/91
Iowa	08/10/78	08/10/78	06/03/81	.....
Kansas	06/28/74	08/28/85	.....	.....
Kentucky	09/30/83	09/30/83	09/30/83	09/30/83
Maryland	09/05/74	11/10/87	09/30/85	.....
Michigan	10/17/73	12/09/78	06/07/83	.....
Minnesota	06/30/74	12/09/78	07/16/79	12/15/87
Mississippi	05/01/74	01/28/83	05/13/82	.....
Missouri	10/30/74	06/26/79	06/03/81	12/12/85
Montana	06/10/74	06/23/81	.....	04/29/83
Nebraska	06/12/74	11/02/79	09/07/84	07/20/89
Nevada	09/19/75	08/31/78	.....	.....
New Jersey	04/13/82	04/13/82	04/13/82	04/13/82
New York	10/28/75	06/13/80	.....	.....
North Carolina	10/19/75	09/28/84	06/14/82	09/06/91
North Dakota	06/13/75	01/22/90	.....	01/22/90
Ohio	03/11/74	01/28/83	07/27/83	.....
Oregon	09/26/73	03/02/79	03/12/81	02/23/82
Pennsylvania	06/30/78	06/30/78	.....	.....
Rhode Island	09/17/84	09/17/84	09/17/84	09/17/84
South Carolina	06/10/75	09/26/80	04/09/82	.....
Tennessee	12/28/77	09/30/86	08/10/83	04/18/91
Utah	07/07/87	07/07/87	07/07/87	07/07/87
Vermont	03/11/74	.....	03/16/82	.....
Virgin Islands	06/30/76	.....	.....	.....
Virginia	03/31/75	02/09/82	04/14/89	.....
Washington	11/14/73	.....	09/30/86	09/26/89
West Virginia	05/10/82	05/10/82	05/10/82	05/10/82
Wisconsin	02/04/74	11/26/79	12/24/80	12/19/86
Wyoming	01/30/75	05/18/81	.....	.....
Totals	39	34	27	21

IV. Review Under Executive Order 12291 and the Regulatory Flexibility Act

The Office of Management and Budget has exempted this rule from the review requirements of Executive Order 12291 pursuant to section 8(b) of that Order.

Under the Regulatory Flexibility Act, EPA is required to prepare a Regulatory Flexibility Analysis for all rules which may have a significant impact on a substantial number of small entities. Pursuant to section 605(d) of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), I certify that this State General Permits Program will not have a significant impact on a substantial number small entities. Approval of the North Carolina NPDES State General Permits Program establishes no new substantive requirements, nor does it alter the regulatory control over any industrial category. Approval of the North Carolina NPDES State General Permits Program merely provides a simplified administrative process.

Dated: September 6, 1991.

Patrick M. Tobin,

Deputy Regional Administrator.

[FR Doc. 91-23497 Filed 9-27-91; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Privacy Act of 1974; Amendments to Existing System of Records

AGENCY: Federal Deposit Insurance Corporation ("FDIC").

ACTION: Notice of proposed changes to a system of records: "Financial Information System—FDIC."

SUMMARY: This notice amends the categories of records included in this system by adding a new category of record and setting forth the retention and disposal schedule for such record. This record will enable the FDIC to maintain more accessible, accurate information on the delegations of authority to certain individuals to approve particular types of expenditures.

DATES: Comments must be submitted by November 29, 1991. The amendments will become effective December 16, 1991, unless a superseding notice to the contrary is published before that date.

ADDRESSES: Comments should be addressed to Hoyle L. Robinson, Executive Secretary, Federal Deposit Insurance Corporation, 550 17th St. NW., Washington, DC 20429, or hand-delivered to and inspected in Room F-400 at 1776 F Street, NW., Washington, DC, Monday through Friday, between the hours of 9 a.m. and 5 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Patti C. Fox, Assistant Executive Secretary (Operations), FDIC, 550 17th Street, NW, Washington, DC 20429, telephone (202) 898-3713 or John P. Adams, Senior Attorney (FOIA), telephone (202) 898-3819.

SUPPLEMENTARY INFORMATION: The FDIC's system of records entitled "Financial Information System—FDIC" is being amended to add a new type of record to the system. This record reflects the authority of certain individuals to approve particular types of expenditures. The categories of records have been changed to include these records and a retention and disposal schedule for this record has been added. These records are signature cards which contain an individual's name, signature and social security number. Inclusion of these records in this system of records will enable the FDIC to more efficiently manage its financial information.

Accordingly, the Board of Directors of the FDIC proposes to amend the Financial Information System—FDIC to read as follows.

FDIC 30-64-0012

SYSTEM NAME:

Financial Information System—FDIC. (Complete text appears at 40 FR 39083 (Aug. 27, 1975) and was amended at 42 FR 57345 (Nov. 2, 1977); 44 FR 66993 (Nov. 21, 1979); 44 FR 69008 (Nov. 30, 1979, effective Dec. 28, 1979); 46 FR 45690 (Sept. 14, 1981, effective Oct. 14, 1981); 47 FR 42165 (Sept. 24, 1982, effective November 30, 1982).)

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

* * * Records on individuals who are employees of the FDIC authorized to approve payment authorization vouchers or regulation and supervision expenditures.

* * * * *

RETENTION AND DISPOSAL:

* * * Records on individuals who are employees of the FDIC authorized to approve payment authorization vouchers or regulation and supervision expenditures will be maintained for a period of three years or until the next audit by the General Accounting Office.

* * * * *

By direction of the Board of Directors.

Dated at Washington, DC this 24th day of September, 1991.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 91-23526 Filed 9-27-91; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL MARITIME COMMISSION

City of Kodiak et al.; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200569

Title: City of Kodiak/American President Lines Terminal Agreement.

Parties: City of Kodiak ("City"), American President Lines, Ltd. ("APL").

Synopsis: The proposed Agreement, filed September 17, 1991 would permit the City to lease approximately 50,300 square feet of space to APL for a five-year period for the storage of containers, chasis and tractors.

Agreement No.: 224-200570.

Title: City of Los Angeles/Yang Ming Marine Transport Terminal Agreement.

Parties: City of Los Angeles ("City"), Yang Ming Marine Transport Corporation, Ltd. ("Yang Ming").

Synopsis: The proposed Agreement, filed September 17, 1991 would permit the City to lease approximately 35 acres of marine terminal space at berths 127-131 to Yang Ming for an initial term of ten years.

Agreement No.: 224-200571.

Title: City of Los Angeles and Pasha Maritime Services, Inc. Nonexclusive Preferential Crane Assignment Agreement.

Parties: City of Los Angeles ("City"), Pasha Maritime Services, Inc. ("Pasha").

Synopsis: Under the agreement's terms City assigns to Pasha on a preferential, nonexclusive basis, the use of a specified crane owned by the Port of Los Angeles. This assignment shall be

on a month-to-month basis and Pasha will compensate City for the use of the crane according to the rates set forth in City's tariff.

Dated: September 24, 1991.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91-23434 Filed 9-27-91; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Allied Irish Banks, p.l.c., 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 October 21, 1991.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. Allied Irish Banks, p.l.c., Dublin, Ireland, and First Maryland Bancorp, Baltimore, Maryland; to acquire 100 percent of the voting shares of The York Bank and Trust Company, York, Pennsylvania.

B. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. AmFirst Financial Services, Inc., McCook, Nebraska; to acquire 100 percent of the voting shares of State Bancshares, Inc., Benkleman, Nebraska.

2. Bushton Investment Company, Inc., Hays, Kansas; to acquire 100 percent of the voting shares of The Bank of Inman, Inman, Kansas.

3. Morrill Bancshares, Inc., Sabetha, Kansas; to acquire 3.42 percent of the voting shares of Morrill and Janes Bancshares, Inc., Hiawatha, Kansas, for a total of 32.35 percent, and thereby indirectly acquire Morrill and Janes Bank and Trust Company, Hiawatha, Kansas.

Board of Governors of the Federal Reserve System, September 24, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-23517 Filed 9-27-91; 8:45 am]

BILLING CODE 6210-01-F

Bank of Camden Employee Stock Ownership Plan, 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 16, 1991.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Bank of Camden Employee Stock Ownership Plan, Camden, Tennessee; to acquire an additional 2.37 percent of the voting shares of Bancshares of Camden, Inc., Camden, Tennessee, for a total of 12.20 percent, and thereby indirectly acquire Bank of Camden, Camden, Tennessee.

B. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. John DeGering & Kay DeGering, Lusk, Wyoming; Gertrude O. Chamberlain & Harry Charles Sager (power of attorney), Lusk, Wyoming; Paul T. Heany & Thelma R. Heany, Lusk, Wyoming; Wanda M. Lorenzen, Lusk, Wyoming; Lana L. Merchen & Willard L. Merchen, Lusk, Wyoming; Audrey J. Pfister, Lusk, Wyoming; Robert C. Templeton & Josephine K. Templeton, Lusk, Wyoming; Stanley G. Wasson & Shirley M. Wasson, Lusk, Wyoming; and Emily Grant Whaley & Jay William Whaley, Island Park, Idaho; to each acquire an additional 1.11 percent of the voting shares of Bankers Capital Corporation, Lusk, Wyoming, for individual totals of 11.11 percent, and thereby indirectly acquire Lusk State Bank, Lusk, Wyoming.

Board of Governors of the Federal Reserve System, September 24, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-23518 Filed 9-27-91; 8:45 am]

BILLING CODE 6210-01-F

Compagnie de Suez and Banque Indosuez, Paris, France; Application to Engage De Novo in Providing Investment Advice, and Execution and Clearance of Futures Contracts and Options on Futures Contracts on Stock Indexes

Compagnie de Suez and Banque Indosuez, Paris, France ("Applicants"), have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) ("BHC Act") and § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)), through their wholly-owned subsidiary, Indosuez Carr Futures Inc., Chicago, Illinois ("Company"), to engage *de novo* in providing certain investment advice and to engage in the execution and clearance on major commodity exchanges of various futures contracts and options thereon as a futures commission merchant. Specifically, Applicants propose that Company provide investment advice and engage in the execution and clearance on the Chicago Mercantile Exchange ("CME") of the Nikkei Stock Average futures contract ("Nikkei contract") and options thereon, and on the Chicago Board of Trade ("CBOT") of the Tokyo Stock Price Index futures contract ("TOPIX contract") and options thereon. These activities would be conducted on a nationwide basis.

Section 4(c)(8) of the BHC Act provides that a bank holding company may with Board approval, engage in any activity "which the Board, after due notice and opportunity for hearing, has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a

proper incident thereto." Applicants believe that these proposed activities are "so closely related to banking or managing or controlling banks as to be a proper incident thereto."

The Board has previously approved the execution and clearance of stock index futures contracts and options thereon as well as the provision of related investment advice. *See, e.g., Chemical Banking Corporation*, 76 Federal Reserve Bulletin 660 (1990)(Standard & Poor's 500 Stock Price Index futures contract ("S&P 500") traded on the CME; options on the S&P 500 traded on the CME); *The Long-Term Credit Bank of Japan, Limited*, 74 Federal Reserve Bulletin 573 (1988)(S&P 500, options on the S&P 500). The Board has not previously approved the execution and clearance of the Nikkei contract and options thereon traded on the CME or the TOPIX contract and options thereon traded on the CBOT. Applicants assert that the proposed activities are essentially identical to the those activities previously approved by the Board. *See, e.g., The HongKong and Shanghai Banking Corporation*, 76 Federal Reserve Bulletin 770 (1990)(Nikkei contract traded on the Singapore International Monetary Exchange; TOPIX contract traded on the Tokyo Stock Exchange); *Chemical Banking Corporation, supra*. Applicants have made the commitments set forth in § § 225.25(b)(18) and (19) of the Board's Regulation Y (12 CFR 225.25(b)(18) and (19)) and considered by the Board in previous Orders.

Applicants take the position that the proposed activities will benefit the public. Applicants believe that the proposed activities will promote competition and provide added convenience to customers of Company. Moreover, Applicants believe that these benefits will outweigh any possible adverse effects of the proposed activities and that, indeed, no adverse effects are currently foreseen.

Any views or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC, 20551, not later than October 25, 1991. Any request for a hearing must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by 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, summarizing the evidence that would be presented at a hearing, and indicating how that party commenting would be aggrieved by approval of the proposal.

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of New York.

Board of Governors of the Federal Reserve System, September 24, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91–23520 Filed 9–27–91; 8:45 am]

BILLING CODE 6210–01–F

Crestar Financial Corporation; Application to Engage De Novo in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a) of the Board's Regulation Y (12 CFR 225.23(a)) 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 the Board has dtermined by order to be 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 October 25, 1991.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1.Crestar Financial Corporation, Richmond, Virginia; to engage *de novo* in the issuance and sale of variably denominated official payment instruments and in certain data processing, marketing and servicing activities directly or incidentally related to payment instruments for affiliated institutions subject to the conditions imposed by the Board in *Hong Kong and Shanghai Banking Corporation*, 73 Federal Reserve Bulletin 808 (1987). Applicant proposes to conduct the activity in Virginia, Maryland and the District of Columbia.

Board of Governors of the Federal Reserve System, September 24, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91–23521 Filed 9–27–91; 8:45 am]

BILLING CODE 6210–01–F

Haugo Bancshares, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) 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, or to engage in such an activity. Unless otherwise noted, these 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 October 21, 1991.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Haugo Bancshares, Inc., Elk Point, South Dakota; to become a bank holding company by acquiring 100 percent of the voting shares of Haugo Investment Company, Sioux Falls, South Dakota, and thereby indirectly acquire Valley Bank, Elk Point, South Dakota.

In connection with this application, Applicant also proposes to engage in insurance agency activities in a place with a population of less than 5,000 pursuant to § 225.25(b)(8)(iii)(A) of the Board's Regulation Y. These activities will be conducted in Elk Point, South Dakota, and at branches in Jefferson and North Sioux City, South Dakota.

Board of Governors of the Federal Reserve System, September 24, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-23522 Filed 9-27-91; 8:45 am]

BILLING CODE 6210-01-F

GENERAL ACCOUNTING OFFICE

Federal Accounting Standards Advisory Board; Meeting

AGENCY: General Accounting Office.

ACTION: Notice.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. No. 92-463), as amended, notice is hereby given that a meeting of the Federal Accounting Standards Advisory Board will be held on Wednesday, October 15, 1991, from 9 a.m. until 4 p.m. in room 7313 of the General Accounting Office, 441 G St. NW., Washington, DC.

The agenda for the meeting will consist of a review of the minutes of the September 26 meeting, an update on staff projects, discussion of any remaining issues on Federal accounting standards (Exposure Draft), discussion of staff study on inventory accounting, and Conceptual Framework issues. We advise that other items may be added to the agenda; interested parties should contact the Staff Director for more specific information.

Any interested person may attend the meeting as an observer. Board discussions and reviews are open to the public.

FOR FURTHER INFORMATION CONTACT: Ronald S. Young, Staff Director, 401 F St. NW., room 302, Washington, DC 20001, or call (202) 504-3336.

DATES: October 16, 1991.

ADDRESSES: 441 G St., NW., room 7313, Washington, DC 20548.

Authority: Federal Advisory Committee Act. Pub. L. No. 92-463, section 10(a)(2), 86 Stat. 770, 774 (1972) (current version at 5 U.S.C. app. section 10(a)(2) (1988); 41 CFR 101-6.1015 (1990).

Dated: September 24, 1991.

Ronald S. Young,

Staff Director.

[FR Doc. 91-23465 Filed 9-27-91; 8:45 am]

BILLING CODE 1610-01-M

GENERAL SERVICES ADMINISTRATION

Information Collection Activities Under Office of Management and Budget Review

AGENCY: Federal Supply Service (FBP), GSA.

SUMMARY: The GSA hereby gives notice under the Paperwork Reduction Act of 1980 that it is requesting the Office of Management and Budget (OMB) to renew expiring information collection 3090-0112, State Agency Donation Report of Surplus Personal Property. This report complies with Public Law 95-519 which requires annual reports of donations of personal property to public agencies.

ADDRESSES: Send comments to Bruce McConnell, GSA Desk Officer, room 3235, NEOB, Washington, DC 20503, and to Mary L. Cunningham, GSA Clearance Officer, General Services Administration (CAIR), 18th & F Street NW., Washington, DC 20405.

Annual Reporting Burden:

Respondents: 55; *annual responses:* 4; *average hours per response:* 1.00; *burden hours:* 220.

FOR FURTHER INFORMATION CONTACT: Audrey L. Harris, (703) 557-1234. copy of Proposal: May be obtained from the Information Collection Management Branch (CAIR), 7102, GSA Building, 18th & F St. NW., Washington, DC 20405, by telephoning (202) 501-2691, or by faxing your request to (202) 501-2727.

Dated: September 13, 1991.

Emily C. Karam,

Director, Information Management Division.

[FR Doc. 91-23412 Filed 9-27-91; 8:45 am]

BILLING CODE 6820-24-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 91F-0356]

Ethyl Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the Ethyl Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of 2,2'-ethylidenebis(4,6-di-*tert*-butylphenyl)fluorophosphonite as an antioxidant used in adhesives and in the preparation of polymers intended for contact with food.

FOR FURTHER INFORMATION CONTACT: Daniel N. Harrison, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 1B4281) has been filed on behalf of the Ethyl Corp., c/o 1150 17th St. NW., Washington, DC 20036, proposing that the food additive regulations in § 175.105 *Adhesives* (21 CFR 175.105) and § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) be amended to provide for the safe use of 2,2'-ethylidenebis(4,6-di-*tert*-butylphenyl)fluorophosphonite as an antioxidant used in adhesives and in the preparation of polymers intended for contact with food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: September 20, 1991.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 91-23444 Filed 9-27-91; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 91F-0358]

W. R. Grace & Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that W. R. Grace & Co. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of styrene block polymers with 1,3-butadiene, hydrogenated as components of articles that contact food.

FOR FURTHER INFORMATION CONTACT: Daniel N. Harrison, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 0B4231) has been filed by W. R. Grace & Co. (Dewey and Almy Division), 55 Hayden Ave., Lexington, MA 02173. The petition proposes to amend the food additive regulations in § 177.1210 *Closures with sealing gaskets for food containers* (21 CFR 177.1210) to provide for the safe use of styrene block polymers with 1,3-butadiene, hydrogenated as components of articles that contact food.

The potential environmental impact of this section is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 35.40(c).

Dated: September 20, 1991

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 91-23525 Filed 9-27-91; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO-030-5101-09-YCKD; DES-91-23]

Extension of the Comment Period for the Draft Environmental Impact Statement for the TransColorado Gas Transmission Project and Scheduling of an Additional Public Hearing

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of extension of comment period and scheduling of an additional Public Hearing.

SUMMARY: This notice extends the comment period on the Draft Environmental Impact Statement (Draft EIS) for the TransColorado Gas Transmission Project for a period of 45 days. The 45-day comment period will close November 22, 1991, at 4:30 p.m. Mountain Standard Time.

The additional public hearing will be held October 16, 1991, at 7:30 p.m. at the Norwood Community Center, Norwood, Colorado. Oral statements will be heard and recorded at the public hearing. There will be an informal open house prior to the hearing to provide an opportunity to meet with BLM representatives to discuss and ask questions about the Draft EIS. The open house will begin at 6:30 p.m.

FOR FURTHER INFORMATION CONTACT: Chuck Finch, Project Manager, Bureau of Land Management, 2465 South Townsend Avenue, Montrose, Colorado 81401, Phone 303-249-7791.

Dated: September 23, 1991.

Alan L. Kesterke,

District Manager.

Dated: September 25, 1991.

Approved:

Jonathan P. Deason,

Director, Office of Environmental Affairs.

[FR Doc. 91-23483 Filed 9-27-91; 8:45 am]

BILLING CODE 4310-JB-M

[CA-010-00-4212-13, CA-26604FD]

Realty Action; Sales, Leases; Calaveras County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Pursuant to section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716), the Bureau of Land Management, Folsom Resource Area, has identified the following described private lands in Calaveras County, California, as being suitable for transfer from Federal ownership by way of a land exchange with The Nature Conservancy subject to valid existing rights:

T.6N., R.14E., Mount Diablo Meridian, California

Section 24, Lot 1.
Comprising 37.22 acres, more or less.

This notice deals exclusively with the Federal lands listed above. A previous Notice of Realty Action has addressed the private (offered) lands to be acquired by the Bureau of Land Management.

The subject parcel will be used by the Bureau of Land Management in its exchange program to acquire wetlands in Humboldt County, California.

The purpose for the exchange is to improve the Bureau's management of adjoining public land, and to enhance public recreation, wildlife and riparian habitat at the mouth of the Mattole River. This exchange acquisition will meet the Bureau's land use planning goals and objectives as outlined in the Scattered Tracts Management Framework Plan and interim management under the Draft Arcata Resource Management Plan.

ADDRESSES: For a period of 45 days from publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, c/o Area Manager, Folsom Resource Area, 63 Natoma Street, Folsom, CA 95630.

FOR FURTHER INFORMATION CONTACT: Dean Decker, (916) 985-4474, or at the address listed below.

SUPPLEMENTARY INFORMATION: The Federal lands will be transferred subject to a reservation to the United States for a right-of-way for ditches and canals constructed under the authority of the Act of August 20, 1890 (43 U.S.C. 945).

Authorized rights-of-way and any other authorized land uses will be identified as prior existing rights.

All necessary clearances including clearances for archaeology, rare plants and animals, will be completed prior to any conveyance of title by the U.S.

Publication of this notice in the **Federal Register** segregates the public land described herein from all forms of appropriation under the public land laws, including the mineral leasing laws, for a period of two years from the date of publication of this notice in the **Federal Register.**

Dated: September 18, 1991.

D.K. Swickard,

Area Manager.

[FR Doc. 91-23285 Filed 9-22-9 ; 8:45 am]

BILLING CODE 4310-40-M

INTERSTATE COMMERCE COMMISSION

[No. MC-C-30190]

State of Georgia Restrictions on Registration of Motor Carrier Operating Authority—Declaratory Order Proceeding

AGENCY: Interstate Commerce Commission.

ACTION: Notice of declaratory order proceeding.

SUMMARY: This proceeding was originally docketed No. 40604 and was published in the **Federal Register** on September 20, 1991 (56 FR 47805). This matter is being republished solely for the purpose of correcting the docket number. Comments are still due by October 7, 1991, and should refer to Docket No. MC-C-30190.

FOR FURTHER INFORMATION CONTACT: Heber Hardy, Deputy Director, (202) 275-7148 or Alice Ramsay, Chief, Insurance Branch, (202) 275-0944 (TDD for hearing impaired (202) 275-1721).

Decided: September 24, 1991.

By the Commission, Sidney L. Strickland, Jr.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-23470 Filed 9-27-91; 8:45 am]

BILLING CODE 7035-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Literature 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 Literature Advisory Panel (Creative Writing: Poetry Fellowships Section) to the National Council on the Arts will be held on October 16-17, 1991 from 9 a.m.-6:30 p.m. and October 18 from 9 a.m.-4 p.m. in room 714 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 18 from 1 p.m.-4 p.m. The topic will be policy discussion.

The remaining portions of this meeting on October 16-17 from 9 a.m.-6:30 p.m. and October 18 from 9 a.m.-1 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of September 23, 1991, 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 person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

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 24, 1991.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 91-23411 Filed 9-27-91; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Permit Applications Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978, Public Law 95-541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act of 1978 at Title 45 part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to these permit applications by October 31, 1991. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, room 627, Division of Polar Programs, National Science Foundation, Washington, DC 20550.

FOR FURTHER INFORMATION CONTACT: Charles E. Myers at the above address or (202) 357-7817.

SUPPLEMENTAL INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95-541), has developed regulations that implement the "Agreed Measures for the Conservation of Antarctic Fauna and Flora" for all United States citizens. The Agreed Measures, developed by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Specially Protected Areas and Sites of Special Scientific Interest.

The applications received are as follows:

1. Applicant

Diane McKnight, U.S. Geological Survey, Denver, CO 80225.

Activity for Which Permit Requested

Enter Site of Special Scientific Interest (SSSI). The applicant is conducting hydrology research on Fryxell Stream within Site of Special Scientific Interest No. 12. She requests permission to enter the SSSI to collect water samples and maintain a stream gage.

Location

Site of Special Scientific Interest No. 12, Victoria Land, Antarctica.

Dates

October 1991 to February 1992.

2. Applicant

Rennie S. Holt, Southwest Fisheries Science Center, National Marine Fisheries Service, LaJolla, CA 92038.

Activity for Which Permit Requested

Taking. The Convention for the Conservation of Antarctic Marine Living Resources (CCAMLR) recognizes that harvesting of species such as Antarctic krill could have adverse effects on krill-consuming species such as seabirds and marine mammals. To provide a means for detecting and avoiding possible adverse effects on dependent as well as target species, the CCAMLR Scientific Committee has developed a coordinated ecosystem monitoring program. Chinstrap penguins, macaroni penguins, and cape petrels have been identified as potentially useful indicators of the

possible indirect effects of krill harvesting. Authorization is sought to conduct research and monitoring activities on selected seabirds as part of the CCAMLR Ecosystem Monitoring Program. In addition to these studies, authorization is requested to investigate the ecology and population biology of American Sheathbills.

A principal aim of this work is to quantify variability in food web dynamics by monitoring fisheries activities, natural fluctuations in prey abundance, environmental variability, and selected aspects of seabird life history parameters. Parameters to be monitored include reproductive success, growth rates and conditions, foraging effort, diet, and demography. The foraging energetics of penguins will be investigated using doubly-labeled water techniques (utilizing the stable, non-radioactive isotopes of oxygen-18 and deuterium).

Chick Feeding/Growth Rate Study

Foraging trip duration, diving behavior, chick growth and diet composition of penguins have been measured on Seal Island since 1987/88. In order to understand the relationship between these parameters and food load delivered to chinstrap penguin chicks, it is proposed to continuously monitor the mass of the nest contents. As adults return to the next to feed their young, their mass will be automatically recorded using an electronic balance/data acquisition system.

Briefly, this system consists of an electronic balance unit housed in a water proof box. This unit is placed underneath an existing nest of chinstraps guarding chicks. The nest is temporarily displaced, a small area is excavated, and the balance unit with a simulated nest surface is placed in the excavated area. The chicks will be replaced on the new surface. Each nest will be connected to a central data acquisition unit located outside of the colony area. To complement data obtained automatically, the subsequent growth of individual chicks in these nests will be manually measured every 5 days.

Winter Distribution and Diving Behavior

Although much has recently been learned of the diving behavior and distribution of penguins during the breeding season, relatively little is known of their behavior during the winter. The winter behavior of these birds is important in understanding the potential effects of fishery activities on penguins. It is proposed to assess the feasibility of attaching dive recorders to penguins during the winter months and retrieving these units the following breeding season. Currently, recorders are commercially available which allow the determination of the location of animals (by sensing and recording ambient light levels) and their diving behavior for extended periods of time (depending upon the duty cycle of sampling protocols). It is proposed to attach 10 "dummy" models of these recorders to 10 known breeders on Seal Island which have completed their molt (some time in late February). It is planned to examine the rate at which such dummy recorders are recovered during the following breeding season (1992/93) to assess the possibility of using this method to measure winter foraging activity.

Location

Antarctic Peninsula area and South Shetland Islands.

Dates

January 1992 to December 1993.

Charles E. Myers,

Permit Office, Division of Polar Programs.

[FR Doc. 91-23482 Filed 9-27-91; 8:45 am]

BILLING CODE 7555-01-M

Presidential Faculty Fellows Program for the Most Outstanding Young Science and Engineering Faculty

Closing Date: December 2, 1991

Correction to Notice Carried Thursday, September 19, 1991. Correction relates to nominee eligibility.

This Printed Information Contains the Essence of the Announcement for this Program, and is not a Full Copy of the Actual Brochure Containing the Guidelines for Submission. Before Submitting a Nomination, Please Obtain a Printed Copy of the Guidelines by Writing or Calling the Publications Office of NSF.

At the request of the President of the United States, the National Science Foundation announces a new Presidential Faculty Fellows Program (PFF) whereby the President will recognize and support the scholarly activities of some of the Nation's most outstanding young science and engineering faculty members. The National Science Foundation seeks nominations of tenure-track faculty members who have demonstrated an exceptionally high level of research and teaching competence and who have the highest potential for leadership in academic pursuits. Awards are intended to allow Fellows to undertake self-designed, innovative research and teaching projects, to establish research and teaching programs, and to pursue other activities appropriate for outstanding young faculty.

Awards will be announced in Spring 1992, and will carry a grant from the National Science Foundation of $100,000 per year for five years, subject to the availability of funds. Thirty (30) PFF awards are planned of which fifteen (15) will be in engineering and fifteen (15) in science.

The Foundation is also inaugurating this year the National Science Foundation Young Investigator Program (NYI). Together, these two activities replace the Presidential Young Investigator Program which operated from 1984 through 1991. The two activities will operate independently. The NYI program will have a submission deadline separate from the PFF award. A separate listing regarding the NYI program will appear in the Federal Register. Separate nominations are required for the PFF and NYI Programs. PFF awards will be made first, and successful nominees who have also been nominated for the NYI competition will have their nominations administratively withdrawn from the latter. Similarly, successful PFF nominees who have been nominated for the Faculty Awards for Women (FAW) Competition will have their nominations administratively withdrawn from the FAW competition.

Current or former Presidential Young Investigators, who meet all the stated eligibility criteria, are eligible for PFF awards. In successful cases, such PYI awardees will have their PYI awards terminated if active, and their PFF awards will be limited in duration to the number of years unused on their PYI awards. In no case, however, will the tenure of a PFF award be less than two years. Current FAW awardees who receive PFF awards will have their FAW awards terminated, but will be eligible for the full five years of their PFF awards.

Institutional Eligibility

All institutions in the United States that offer a baccalaureate, master's or doctoral degree in a field supported by the Foundation are eligible to participate in this program.

Limit on Nominations

Two nominations may be made by each eligible institution per year.

Faculty Eligibility

To be eligible nominees must:

- Be U.S. citizens or permanent residents as of December 2, 1991;

• Hold a Ph.D. degree, or equivalent, awarded between January 1, 1984 and December 2, 1991; and

• Have begun their first tenure-track or equivalent position at any four-year or graduate-level college or university after January 1, 1988.

Discipline Eligibility

Nominees may work in any discipline of science or engineering normally supported by the Foundation, including research in engineering education or science education.

The Foundation normally will not support biomedical research with disease-related goals, including work on the etiology, diagnosis, or treatment of physical or mental disease, abnormality, or malfunction in human beings or animals. Animal models of such conditions, or development or testing of drugs or other procedures for their treatment also generally are not eligible for support.

Review and Selection

Presidential Faculty Fellows will be selected on the basis of ability, including leadership and leadership potential in research and teaching. NSF will administer the review process and fund awards; the final award decisions will be made by the White House. Recommendations for awards will be based on advice from outstanding scientists and engineers and may include consideration of factors related to science and engineering infrastructure.

The review criteria for the nominee include:

Research Competence and Leadership in science or engineering, including the potential for continuing outstanding contributions, as evidenced by definitive research accomplishments, refereed publications, technical books published, patent and software credits, significant technical papers presented at national or international meetings, honors, distinguished service, recognition by the community for contributions to the public understanding of research by lay-persons, and other noteworthy research contributions.

Teaching Competence and Leadership in science or engineering, including the potential for continuing outstanding contributions, as evidenced by implementation of new curricula, design of new courses, significant educational books, refereed publications, papers presented at national or international meetings, honors, distinguished service, recognition by the community for contributions to public understanding of science or engineering, and other noteworthy education contributions.

Impact of Nominee on Nominating Institution as evidenced by factors such as significant facilitation of cross-discipline research efforts, recognized contributions to educational reforms, and other noteworthy service to be institution and in the community on behalf of the institution.

Nominating Official

Nominations for PFF awards must be submitted by the President or the Chief Academic Officer of the nominating institution.

Nominating Procedure

A PFF submission consists of six complete sets of the nomination materials, one set of an additional forms package to be used for administrative purposes, and four reference letters; each letter must be in an envelope that has been sealed by the individual referee. Each set of the nominating materials should be stapled, and the additional forms package should be clipped together but NOT stapled. Type styles should be no smaller than 12 characters per inch. Page limits must be strictly observed. No appendices or other attachments will be accepted in a PFF submission.

The nominating materials package contains the following:

• Cover Sheet (NSF Form 1273B (8–91));

• Nominator's Statement—A letter to the Director of the National Science Foundation setting forth the basis for the nomination. The letter should address the three principal review criteria described above. (Limit: 3 pages);

• Nominee's Teaching and Research Qualifications (Limit: 1 page);

• Nominee's Research Description (Limit: 2 pages);

• Nominee's Teaching Plan (Limit: 1 page); and

• Biographical Sketch—A brief sketch showing the nominee's name and current position; educational background including dates, institutions, and fields of earned degrees; and professional accomplishments, including professional employment history in reverse chronological order, honors, awards, and references to all publications during the past three years. Citations to representative earlier publications may be included when pertinent to the nomination. (Limit: 3 pages).

The additional forms package contains the following:

1 additional copy of the Cover Sheet (NSF Form 1273B (8–91));

2 copies of Supplementary Nominee Information (NSF Form 1225A); and

2 copies of the Office of Science and Technology Policy Information Form (NSF Form 1317 (8–91)).

The nomination cover sheet, NSF Form 1225A, and the Office of Science and Technology Policy Information Form are contained in the PFF Program Announcement.

Reference Letters

Four (4) reference letters are required. Letters should be from persons who are familiar with the research and teaching capabilities of the nominee, and may not be from individuals at the nominating institution. They should be in the form of letters to the Director of the National Science Foundation addressed and sent in referee-sealed envelopes to the NSF Director, Care of the Nominator, for inclusion in the nomination submission. Letters should specifically address at least one of the review criteria.

The nominating materials package, the additional forms package, and the reference letters should be submitted as a single unit in a large envelope addressed to: Presidential Faculty Fellows Program/NSF 91–103, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

Deadline for Submission of Nominations

All nomination submissions must be received at NSF by 5 p.m., December 2, 1991.

Support and Commitments

Except as otherwise provided in this announcement and other PFF program materials, the terms and conditions of this award are those stated in the publication, NSF 90–77—Grants for Research and Education in Science and Engineering. Awardees may expect to receive additional guidance regarding the administration of their grants.

Institutions are expected to make a significant contribution to the support of awardees by guaranteeing their full academic-year salary. None of the funds provided by NSF under PFF awards may be used for the academic-year salary of the awardee. Indirect costs are limited to 10% of the funds provided by NSF.

The 1992 Presidential Faculty Fellows will be announced in Spring 1992. They are expected to begin their activities under this program no later than October 1, 1992. PFF awardees must remain in tenure-track positions at eligible institutions at all times during the tenure of their awards.

Inquiries

Inquiries regarding this program may be addressed to the Presidential Faculty Fellows Program, National Science

Foundation, Washington, DC 20550, or telephoned to (202) 357–7536. Descriptions and telephone numbers for NSF's programs can be found in the annual Guide to Programs, single copies of which can be obtained from Forms and Publications, National Science Foundation, Washington, DC 20550, telephone number (202) 357–7861. Users of electronic mail who have access to either BITNET or INTERNET may prefer to order publications electronically. BITNET users should address requests to pubs@nsf. INTERNET users should send requests to pubs@nsf.gov. In your request, include the NSF publication number and title, number of copies, your name, and a complete mailing address. The PFF Announcement is NSF 91–103.

Dated: September 24, 1991.

Mary Frances Sladek;

Program Manager, PFF/NYI Programs.

[FR Doc. 91–23439 Filed 9–27–91; 8:45 am]

BILLING CODE 7555–01–M

Young Investigator Awards FY 1992 program Announcement and Guidelines

Corrected Announcement of Notice Carried On Thursday, September 19, 1991. Corrections relate to nominee eligibility. National Science Foundation replaces Presidential Young Investigator Awards (PYI) Program with the National Science Foundation Young Investigator Awards Program

Deadline January 31, 1992.

This printed information contains the essence of the announcement for this program, and is not a full copy of the actual brochure containing the guidelines and nomination forms. Before submitting a nomination, please obtain a copy of the guidelines by writing or calling the publications office of NSF.

The National Science Foundation announces the NSF Young Investigator Awards (NYI) program, NSF 91–112. The Foundation is also inaugurating this year, at the request of the President of the United States, the Presidential Faculty Fellows Program (PFF), NSF 91–103. Together, these two activities replace the presidential Young Investigator Program that operated from 1984 to 1991. The two activities will operate independently with separate nominations required. PFF awards will be announced first, and successful nominees who have also been nominated for the NYI competition will have their nominations administratively withdrawn from the latter. The PFF program has different nominating and eligibility rules from both the PYI and NYI programs and is described under separate guidelines available upon request from the address noted at the end of this announcement.

The NYI Awards are established to achieve the following objectives:

- To recognize outstanding young faculty in science and engineering;
- To enhance the academic careers of recent Ph.D. recipients by providing flexible support for research and teaching;
- To foster contact and cooperation between academia and industry.

Approximately 150 new NYI awards will be made in this competition. Awards will be made for up to five years based on an annual determination of satisfactory performance and subject to the availability of funds.

The NYI awards are intended to encourage the development of future academic leaders, both in teaching and research. NSF Young Investigators are expected to have standard teaching responsibilities relative to non-NYI faculty.

Each NSF Young Investigator Award consists of an annual base grant of $25,000 from NSF plus up to $37,500 of additional funds per year on a dollar-for-dollar matching basis from industrial and not-for-profit sources,[1] resulting in total annual support of up to $100,000.

Eligibility

NYI awards are tenable only in tenure-track or tenured positions at eligible institutions as defined by the institutional criteria listed below. NSF Young Investigators who transfer at any time prior to or during the period of their grants to institutions that do not meet the institutional eligibility criterion must resign their awards.

The following institutional, nominee, and discipline criteria apply to this program:

Institutional Criteria

- Any U.S. institution that awards a baccalaureate, master's or doctoral degree in a field supported by the Foundation is eligible to nominate faculty or prospective faculty to participate in this program.

[1] NSF would like to encourage cooperation between university and industry on research activities and, therefore, encourages matching fund support from industry. Support from non-profit foundations and certain State and municipal agencies that promote science and technology or that deliver science or engineering related services, (e.g. wastewater treatment; transportation; or building regulation) are also acceptable for matching fund purposes. Matching Fund Guidelines will be provided to awardees.

Nominee Criteria

- Nominees must be U.S. citizens or permanent residents as of January 31, 1992;
- Nominees must have a Ph.D. degree, or equivalent, awarded or to be awarded on or after January 1, 1986, but no later than October 1, 1992;
- Nominees must not have entered on a tenure-track position at any college or university prior to January 1, 1988; and
- Nominees must have a tenure-track or tenured faculty position or equivalent at their nominating institution or receive an appointment to such a position to begin on or before October 1, 1992.

Discipline Criteria

- Any branch of science or engineering normally supported by NSF is eligible for support by the NYI Awards program, including research in engineering education or science education.
- NSF normally will not support biomedical research with disease-related goals, including work on the etiology, diagnosis, or treatment of physical or mental disease, abnormality, or malfunction in human beings or animals. Animal models of such conditions, or the development or testing of drugs or other procedures for their treatment also generally are not eligible for support.

Review and Selection

The review of nominees will be based on the nominee's ability and potential, as a researcher and teacher, for contributing to the vitality of the nation's scientific and engineering effort. The selection of individuals to receive awards will be made by the National Science Foundation with the advice of panels of scientists and engineers and may include consideration of factors related to science and engineering infrastructure. The review criteria include:

- Nominee's competence in science or engineering—as evidenced by the nominee's most outstanding achievements to date, particularly the quality of research and publications, teaching accomplishments, institutional impact, and Reference Forms.
- Nominee's potential for continued professional growth as a research scientist or engineer—as evidenced by the quality of the nominee's research plan, the currency and significance of the long-range research, and the appropriateness of the research plan to his/her academic setting and its probable impact upon the institution's research environment.

• Nominee's potential for significant development as a teacher and academic leader in the training of future scientists or engineers and commitment to an academic career—as evidenced by the nominee's teaching plan and the narrative statements describing the nominee's qualifications for this award with regard to the nominee's development as an academic leader and the nominee's potential impact on the institution in its teaching mission.

The FY 1992 NYI awardees will be announced approximately June 1992. The base funding of $25,000 for the first year will be made at the time of the awards announcement. Awardees will be expected to begin their research activities under this program no later than October 1, 1992.

Nominating Procedures

Only the department chairperson or an analogous administrative official at the institution may nominate faculty members for the awards.

An NYI Submission consists of eight complete sets of the nomination form, additional forms as specified, and three Reference Forms in referee-sealed envelopes. Please staple each complete set of the nomination form separately. Type styles should be no smaller than 12 characters per inch. Forms for all pages of the submission are included in the actual program brochure.

Nomination Form

1. Cover Sheet (1 page).
2. Support and Commitment Statement (1 page).
3. Nominator's Narrative Statement (1 page).
4. Nominee's Research and Teaching Qualifications (1 page).
5. Nominee's Teaching Plan (1 page).
6. Nominee's Research Plan (2 pages).
7. Biographical Sketch (3 pages).

Additional Forms

1. NSF Form 1225A—Supplementary Nominee Information (1 page).
2. Extra copy of the Cover Sheet.

References

Three completed reference forms in sealed envelopes should be provided from individuals who are familiar with the research and teaching capabilities of the nominee. Referees may not be from the nominating institution (comments from on-campus individuals may be incorporated in the Nominator's Narrative Statement.) Reference forms should be collected using NSF-provided, referee-sealed envelopes and sent in the nomination submission to NSF.

If NSF-provided envelopes are not available, envelopes should be addressed to The NSF Young Investigator Awards Program, Care of the Nominator and clearly marked on both sides: "To be opened only by NSF."

Support and Commitments

An NYI award carries a base NSF grant of $25,000 per year plus up to $37,500 of additional funds per year on a dollar-for-dollar basis to match contributions from industrial sources. The base grant of $25,000 for the first year will be provided at the time of the initial award. The first submission for matching funds should be accompanied by a total first-year budget, in support of the awardee's research activities. The budget should show both the amount requested from the Foundation (including the previously-granted base grant) and the sources and the amounts of industrial support. In subsequent years requests for funding of the base and any matching support should be combined in a single request. Further guidance for budget submissions will be provided to awardees.

Institutions are expected to contribute to the support of the awardees by guaranteeing their full academic year salary, assisting in the arrangement of outside matching funds, and providing them with the same financial assistance for the use of equipment and the costs of student help as is made available to other faculty. None of the funds, whether provided by this grant or by outside supporters of the program as matching funds may be used for the academic-year salary of the awardee; summer salary for awardees may be supported for up to two-ninths of the regular academic-year salary. Indirect costs are limited to ten percent of the total funds provided by the Foundation.

Except as otherwise provided in this announcement, the terms and conditions will be analogous to those stated in the publication, NSF 90–77—Grants for Research and Education in Science and Engineering.

Inquiries

Inquiries regarding the program may be addressed to the NSF Young Investigator Awards, National Science Foundation, 1800 G Street, NW., Washington, DC 20550, or telephoned to (202) 357–7536. Inquires regarding a nomination's review should be addressed to the appropriate NSF disciplinary division. Guidelines for the new program of Presidential Faculty Fellows can be obtained from the address given below. Descriptions and telephone numbers for NSF's programs can be found in the annual NSF Guide to Programs, single copies of which can be obtained by writing or telephoning Forms and Publications, National Science Foundation, Washington, DC 20550, (202) 357–7861. If you are a user of electronic mail and have access to either BITNET or INTERNET, you may prefer to order publications electronically. BITNET users should address requests to *pubs@nsf.* INTERNET users should send requests to *pubs@nsf.gov.* In your request, include the NSF publication number and title, number of copies, your name, and a complete mailing address. Publications will be mailed within 2 days of receipt of your request. The NYI Announcement is NSF 91–112.

Dated: September 24, 1991.

Mary F. Sladek,

Program Manager, PFF/NYI Programs.

[FR Doc. 91–23438 Filed 9–27–91; 8:45 am]

BILLING CODE 7555–01–M

Physics Advisory Committee; Meeting

In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Physics.

Date and Time:

October 16, 1991; 9 a.m. to 12 p.m. (Open).
1:30 p.m. to 5 p.m. (Closed).
October 17, 1991; 8:30 a.m. to 5 p.m. (Closed).
October 18, 1991; 8:30 a.m. to 5 p.m. (Open).

Place: Room 540, National Science Foundation, 1800 G. Street, NW., Washington, DC 20550.

Type of Meeting: Part Open.

Contact Person: Dr. Marcel Bardon, Director, Division of Physics, room 341, National Science Foundation, Washington, DC 20550, (202) 357–7985.

Minutes: May be obtained from contact person listed above.

Purpose of Meeting: To provide advice and recommendations concerning support for research and education in physics.

Agenda:

Open: October 16, 1991; 9 a.m.–12 p.m.—Discussion of FY 1992 Budget Status and other items of interest to the administration of programs of the Division.

Closed: October 16, 1991; 1:30 p.m.–5 p.m.—Proposal reviews and priority analyses involving information on specific grants and declinations, including information of a personal nature on Principal Investigators in the various areas of physics.

Closed: October 17, 1991; 8:30 a.m.–5 p.m.—Continuation of discussions of previous day.

Open: October 18, 1991; 8:30 a.m. to 5 p.m.–Discussion of program plans, budgets and priorities. Status of LIGO site selection and B Factory update.

Reason for Closing: The review of proposal actions will include information of a

proprietary or confidential nature, including technical information; financial data, and personal information concerning individuals associated with the proposals. If discussions were open to the public, these matters that are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act would improperly be disclosed.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91–23440 Filed 9–27–91; 8:45 am]

BILLING CODE 7555–01–M

President's Committee on the National Medal of Science; Meeting

The National Science Foundation announces the following meeting:

Name: President's Committee on the National Medal of Science.

Date: Tuesday, October 8, 1991.

Time: 10 a.m.–5 p.m.

Place: Room 543, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Mrs. Susan E. Fannoney, Staff Assistant, President's Committee on the National Medal of Science, National Science Foundation, Washington, DC 20550 (phone: 202/357–7512).

Purpose of Committee: To provide advice and recommendations to the President in the selection of the National Medal of Science recipients.

Reason for Closing: The nominations being reviewed include information of a personal nature where disclosure would constitute unwarranted invasions of personal privacy. These matters are within exemption 6 of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Reason for Late Notice: Difficulty in arranging for a suitable meeting time for the full Committee.

Dated: September 24, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91–23390 Filed 9–27–91; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–302]

Florida Power Corp.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an exemption from the requirements of appendix J to 10 CFR part 50 to Florida Power Corporation (FPC, the licensee) for the Crystal River Unit 3 Nuclear Generating Station (CR–3) located in Citrus County, Florida.

Environmental Assessment

Identification of Proposed Action

The proposed exemption would grant a one-time relief from the schedular requirements of 10 CFR part 50, appendix J, paragraphs III.D.2(a) and III.D.3 to perform Type B and C tests within a 2-year interval. In addition, related changes to the Technical Specifications would be forthcoming. The requested exemption would allow the licensee to defer the Type B and C testing until prior to startup from the next refueling outage scheduled to begin April 30, 1992, an extension of approximately 2 months.

The licensee's request for exemption and bases therefor are contained in a letter dated January 31, 1991, as supplemented May 16, 1991.

The Need for the Proposed Action

The proposed exemption would allow a one-time relief from performing Type B and C tests for containment penetrations and containment isolation valves, which would otherwise require testing between March 1992 and May 1992. This would enable CR–3 to continue normal plant operation and therefore prevent an unnecessary premature shutdown of CR–3.

The purpose of the Type B and C testing is to assure leak-tight integrity of containment isolation valves and penetrations through verification of acceptable leakage by test. It also provides assurance that periodic surveillance, maintenance and repairs are made to systems or components penetrating the containment. During the last two Type C tests, the licensee took corrective actions for valve repair to reduce containment isolation valve leakage. In addition, the licensee has provided a summary of previous leak test results, which showed leakage to be a small fraction of acceptable values.

Environmental Impacts of the Proposed Action

The proposed exemption would allow a one-time relief from the schedular requirements to perform Type B and C tests within a 2-year period. Because of the short extension requested, the previous satisfactory leak test results, and the low likelihood of significant degradation of components involved during the extension period, the proposed exemption will not negatively impact containment integrity and would not significantly change the risk from any postulated accidents. Therefore, post-accident radiological releases will not be significantly greater than previously determined, nor does the proposed exemption otherwise affect radiological plant effluents, or result in any significant occupational exposure. Likewise, the proposed exemption would not affect nonradiological plant effluents and would have no other environmental impacts. Therefore, the staff concludes that there are no significant radiological or nonradiological environmental impacts associated with the proposed exemption.

Alternatives to the Proposed Action

Because it has been concluded that there are no measurable impacts associated with the proposed exemption, any alternative to the exemption will have either no environmental impacts or greater environmental impacts.

The principal alternative would be to deny the requested exemption. Such action would not reduce environmental impacts of CR–3 operations and would result in reduced operational flexibility.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the Final Environmental Statement for CR–3 which was issued in May 1973.

Agencies and Persons Consulted

The NRC staff has reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The staff has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for exemption from 10 CFR part 50, appendix J, dated January 31, 1991, as supplemented May 16, 1991, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and at the Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida 32629.

Dated at Rockville, Maryland this 19th day of September.

For the Nuclear Regulatory Commission.

Herbert N. Berkow,

Director, Project Directorate II–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 91–23481 Filed 9–27–91; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards Subcommittee on Structural Engineering; Meeting

The ACRS Subcommittee on Structural Engineering will hold a meeting on October 9, 1991, room P-110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance. The agenda for the subject meeting shall be as follows:

Wednesday, October 9, 1991–1 p.m. until the conclusion of business.

The Subcommittee will review the proposed final resolution of Generic Safety Issue-113, "Dynamic Qualification Testing of Large Bore Hydraulic Snubbers."

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those sessions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the meeting, the Subcommittee, along with any of their consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff, the nuclear industry, their respective consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by a prepaid telephone call to the Designated Federal Official, Mr. Elpidio G. Igne (telephone 301/492–8192) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: September 24, 1991.

Gary R. Quittschreiber,

Chief, Nuclear Reactors Branch.

[FR Doc. 91–23474 Filed 9–27–91; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-390 and 50-391]

Tennessee Valley Authority; Availability of Safety Evaluation Report Related to the Operation of Watts Bar Nuclear Plan, Units 1 and 2

The U.S. Nuclear Regulatory Commission has published Safety Evaluation Report, Supplement 7 (NUREG–0847, Supp. 7) related to the operation of Watts Bar Nuclear Plant, Units 1 and 2, Docket Nos. 50–390 and 50–391.

Copies of the report have been placed in the NRC's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and in the Local Public Document Room, Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402, for review by interested persons. Copies of the report may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013–7082. GPO deposit account holders may charge orders by calling 202–275–2060. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161.

Dated at Rockville, Maryland this 18th day of September, 1991.

For the Nuclear Regulatory Commission.

Frederick J. Hebdon,

Director, Project Directorate II–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 91–23480 Filed 9–27–91; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-348-CivP, 50-364-CivP; ASLBP No. 91-626-02-CivP]

Atomic Safety and Licensing Board; Alabama Power Co., (Joseph M. Farley Nuclear Plant, Units 1 and 2); Prehearing Conference Rescheduled

September 23, 1991.

Please take notice that, pursuant to Staff's unopposed request, the prehearing conference scheduled to take place on Wednesday, October 2, 1991, commencing at 9 a.m. in the Commission's hearing room, fifth floor, 4350 East-West Highway, Bethesda, Maryland, is rescheduled to Tuesday, October 29, 1991, at the same time and location.

It Is So Ordered.

For the Atomic Safety and Licensing Board.

John H. Frye III,

Chairman, Administrative Judge.

[FR Doc. 91–23475 Filed 9–27–91; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-213]

Connecticut Yankee Atomic Power Co.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–61, issued to Connecticut Yankee Atomic Power Company (CYAPCO/licensee) for operation of the Haddam Neck Plant located in Middlesex county, Connecticut.

During the upcoming outage, CYAPCO will make modifications to the auxiliary feedwater (AFW) system. These modifications restore the Haddam Neck Plant AFW system to a condition in which it will start automatically and achieve full design basis flow without any assistance from operator action or reliance on the control air system. The proposed amendment would remove a footnote from the Technical Specifications defining AFW system operability.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By October 30, 1991, 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 a hearing and a petition for leave to intervene. Requests for a hearing and a petition 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 contact 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 Russell Library, 123 Broad Street, Middletown, Connecticut 06457. 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 which 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 bases 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 evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, 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 F. Stolz: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gerald Garfield, Esquire, Day, Berry & Howard, Counselers at Law, City Place, Hartford, Connecticut 06103-3499, 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 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated August 30, 1991, 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 located at the Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Dated at Rockville, Maryland, this 23rd day of September 1991.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I-4, Division of Reactor Projects—I/II Office of Nuclear Reactor Regulation.

[FR Doc. 91-23479 Filed 9-27-91; 8:45 am]

BILLING CODE 7590-01-M

[Dockets No. 30-02764; 30-20526 and 40-02678; Licenses No. 34-06903-05; 34-06903-13; and SUD-265 EA 91-001]

The University of Cincinnati, Cincinnati, OH; Order Imposing Civil Monetary Penalty

I

The University of Cincinnati (Licensee) is the holder of six licenses issued by the Nuclear Regulatory Commission (NRC or Commission), including:

A. License No. 34-06903-05 was first issued on June 11, 1979, was renewed on May 21, 1986, and was last amended (Amendment No. 67) on August 3, 1990. License No. 34-06903-05 authorizes possession of: (1) Radiopharmaceuticals and brachytherapy sources in quantities as needed for medical diagnosis and therapy, for use at several medical centers and hospitals affiliated with the University; (2) curie quantities of any byproduct material (with atomic numbers 3 to 83, inclusive) in any form for medical research, research and development (R&D) pursuant to 10 CFR 30.4, and student instruction, animal studies, and calibration of instruments; (3) other miscellaneous licensed material for instrument calibration and leak test analysis services for other licenses; and (4) a portable gauge for the measurement of soil moisture, in accordance with the conditions specified therein.

B. License No. 34-06903-13 was first issued on December 6, 1983, was renewed on April 13, 1989, and was last amended (Amendment No. 9) on November 20, 1990. License No. 34-06903-13 authorizes the possession and use of cobalt-60 sealed source(s) in a teletherapy unit, in accordance with the conditions specified therein.

C. License No. SUD-265 was first issued on May 26, 1961, was renewed on September 15, 1987, and was last amended (Amendment No. 6) on June 14, 1990. License No. SUD-265 authorizes the possession and use of natural uranium in the form of cylinderical slugs in a light water moderated subcritical assembly, in accordance with the conditions specified therein.

II

An inspection of the Licensee's activities was conducted during the period of November 26 through December 27, 1990. The results of the inspection indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the Licensee by letter dated March 22, 1991. The Notice states the nature of the violations, the provisions of the NRC's requirements that the Licensee had violated, and the amount of the civil penalty proposed for the violations. The Licensee responded to the Notice by two letters dated May 17, 1991. In its responses, the Licensee denied in whole 7 of the 21 violations (Violations No. A.1, A.2, A.3, A.6, A.8, A.18 and B), denied in part 3 violations (Violations No. A.4, A.7, and A.10), and admitted the remaining 11 violations. Additionally, the licensee disagreed with the NRC position (set forth in the March 22, 1991, letter transmitting the Notice) on escalating the amount of the base civil penalty for identification and reporting (50%), past performance (100%) and duration (100%).

III

After consideration of the Licensee's responses and the statements of fact, explanation, and argument for mitigation contained therein, the NRC staff has determined, as set forth in the Appendix to this Order, that the violations did occur (Violation A.2 is amended and example A.4.b is being withdrawn) and that the $8,750 penalty proposed for the violations designated in the Notice should be imposed.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, *It Is Hereby Ordered That:*

The Licensee pay a civil penalty in the amount of $8,750 within 30 days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

V

The Licensee may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555. Copies also shall be sent to the Assistant General Counsel for Hearings and Enforcement at the same address and to the Regional Administrator, NRC Region III, 799 Roosevelt Road, Glen Ellyn, Illinois 60137.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(A) Whether the Licensee was in violation of the Commission's requirements as set forth in Violations A.1, A.2, A.3, A.4.a, c, and d, A.6, A.7, A.8, A.10, A.18, and B. in the Notice, as amended, referenced in Section II above, and

(B) Whether, on the basis of such violations, and the additional violations set forth in the Notice that the Licensee admitted, this Order should be sustained.

Dated at Rockville, Maryland this 20th day of September 1991.

Hugh L. Thompson, Jr.,

Deputy Executive Director for Nuclear Materials Safety, Safeguards and Operations Support.

Appendix Evaluation and Conclusions

On March 22, 1991, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for the violations identified during an NRC inspection. The University of Cincinnati responded to the Notice by letter dated May 17, 1991. In its responses, the licensee denied in whole 7 of the 21 violations (Violations No. A.1, A.2, A.3, A.6, A.8, A.18 and B), denied in part 3 violations (Violations No. A.4, A.7, and A.10), and admitted the remaining 11 violations. Additionally, the licensee disagreed with the NRC position (set forth in the March 22, 1991, letter transmitting the Notice) on escalating the amount of the base civil penalty for identification and reporting (50%), past performance (100%) and duration (100%) and requested that the civil penalty be remitted in its entirety or substantially mitigated. The NRC's evaluation and conclusion regarding the licensee's request are as follow:

I. Violations Denied in Total

Restatement of Violation A.1

License Condition No. 20 requires the licensee to conduct its program in accordance with the statements, representations, and procedures contained in a letter dated April 11, 1986.

Item 6 of the letter states that "We continuously monitor amounts of radioactive material in possession of the University when we examine and total * * * the amounts of radioactivity released into the sewage, incinerated, and/or shipped in drums for disposal."

Contrary to the above, the licensee did not continuously monitor amounts of licensed material possessed by the University, because as of December 27, 1990, authorized user inventory data was not complete and the licensee had incomplete sewer disposal information.

This is a repeat violation.

Summary of Licensee's Response to Violation A.1

The licensee denies this violation and states that Item 6 of the referenced letter dated April 11, 1986 does not promise that the University will compile cumulative inventory and sewer disposal data for each day in a year. The licensee contends that although monitoring is continuous, cumulative data is only compiled on a quarterly basis. According to the licensee, inventory data compiled on January 15, 1991, confirmed that license possession limits were met. The licensee also contends that its system has been in effect and accepted by the NRC during numerous prior inspections.

NRC Evaluation of Licensee's Response to Violation A.1

Item 6 of the referenced letter dated April 11, 1986, quoted without ellipsis, states: "We continuously monitor amounts of radioactive material in possession of the University when we examine and total (*as required by NRC regulations)* the amounts of radioactivity released into the sewage, incinerated, and/or shipped in drums for disposal." (Emphasis added.) Thus the frequency of the monitoring is tied to the requirements of the NRC regulations.

Among the NRC regulations relevant here, 10 CFR 20.201(b) requires that each licensee make or cause to be made such surveys as (1) may be necessary for the licensee to comply with the regulations in this part, and (2) are reasonable under the circumstances to evaluate the extent of radiation hazards that may be present. 10 CFR 20.303 requires that no licensee discharge licensed material into

a sanitary sewerage system unless the quantity of licensed material released into the system in any one day and any one month does not exceed specified limits. A quarterly compilation does not fulfill the requirement of the NRC regulations for surveys (e.g., compilations) to assure that daily and monthly disposal limits are met. Since the license condition at issue here includes the frequency schedule specified by the regulations, a quarterly compilation also does not fulfill the requirement of the license condition.

As described in section 9(a) of Inspection Report No. 030–02764/90001(DRSS), the licensee's inventory system is conceptually inadequate because it is incapable of yielding cumulative institutional quantities of licensed material possessed at any given time (i.e., continuously). This is because the system employed by the licensee provides an inventory snapshot of licensed material possessed on only one day of a given calendar quarter (i.e., the day the quarterly compilation is performed).

Furthermore, about 50% of the authorized users failed to provide timely radioactive material disposal data to the radiation safety office for 1990. Consequently, not only is the licensee's material inventory and accountability system incapable of monitoring amounts of radioactive material disposed via the sewer system on a daily or monthly basis as required by 10 CFR 20.303, but also the quarterly data compilation system was not adequately implemented because necessary disposal data from individual authorized users was incomplete. Without the necessary information, the licensee is not capable of monitoring its annual discharges, much less compiling quarterly totals of licensed material possessed by the University.

Contrary to the licensee's assertion, the licensee did have prior notice that NRC found its inventory system unacceptable. As described in Inspection Report No. 030–02764/89002(DRSS), the licensee and its consultant performed an audit of the University's NRC-licensed program in 1989. The audit revealed that the University did not adequately determine quantities of licensed material possessed. The methods employed by the licensee were inadequate in that (1) accurate inventory/disposal records were not maintained by individual researchers and (2) researchers routinely forwarded disposal records to the radiation safety office long after (up to 2 years) the disposals were actually made. Field audits conducted by a licensee consultant identified that 23% of the 677 labs audited did not maintain running inventories. As a result of these 1989 audit findings, NRC concluded the licensee violated License Condition No. 20, which references the letter dated April 11, 1986. NRC incorporated this violation into a Notice issued July 2, 1990 (EA 90–40).

Restatement of Violation A.2

License Condition No. 20 requires the licensee to conduct its program in accordance with the statements, representations, and procedures contained in an application dated August 13, 1984, including the attachment dated August 9, 1984.

Item 14, of the August 9, 1984, attachment states that incinerator personnel have a list of isotopes and maximum quantities which they may incinerate and are given specific limits for each radionuclide which may be incinerated. The licensee's "incinerator burning limits" list limits the hourly incinerator burn limits for I–125 and I–129 to 0.19 microcuries and 0.08 microcuries, respectively.

Contrary to the above, licensee incinerator personnel incinerated licensed materials in excess of hourly incinerator burn limits on several occasions in 1990. Specifically, an average of 3.3 microcuries of I–125 was burned per hour on January 2 and an average of 3.3 microcuries of I–125 was burned per hour on May 1, 1990. In addition, on February 16, 1990, an average of 0.83 microcuries of I–125 was burned per hour and on May 1, 1990, an average of 0.63 microcuries of I–129 was burned per hour.

Summary of Licensee's Response to Violation A.2

The licensee denies this violation and states that its NRC license does not limit the incineration of radioactive materials to an hourly value. License Condition 19 states that the University is "authorized to disposed of isotopes specified in item 14 of application dated August 9, 1984 by incineration, provided gaseous effluents from incineration do not exceed the limits specified for air in appendix B, table II, 10 CFR 20." The licensee points out that no reference is made in 10 CFR 20 requiring hourly averaging of concentrations.

The licensee also contends that Item 14 of the August 9, 1984 attachment to the application dated August 23, 1984 was incompletely stated in the violation. According to the licensee, the balance of the Item 14 statement makes clear that the hourly burn limit is a guideline to ensure that license limits are not exceeded.

NRC Evaluation of Licensee's Responses to Violation A.2

The NRC agrees that License Condition No. 19 authorizes the licensee to dispose of isotopes specified in Item 14 of application dated August 9, 1984, by incineration provided the gaseous effluents from incineration do not exceed the limits specified for air in appendix B, table II, 10 CFR part 20. The NRC also agrees that hourly averaging of effluent concentrations is not required by 10 CFR Part 20 and that 10 CFR 20.106(a) allows effluent concentrations to be averaged over a period not greater than 1 year. However, License Conditions No. 20 requires the licensee to conduct its program in accordance with the statements, representations, and procedures contained in an application dated August 13, 1984, including the attachment dated August 9, 1984, and the letter dated April 11, 1986. License Condition No. 20 also clearly states, "The Nuclear Regulatory Commission's regulations shall govern *unless the statements, representations and procedures in the licensee's application and correspondence are more restrictive than the regulations.*" (Emphasis added.)

Item 14 of the August 9, 1984 attachment to the August 23, 1984 application states, in part, that incinerator personnel have a list of isotopes and maximum quantities which they may incinerate. The letter dated April 11, 1986 states that incinerator operators are given specific limits for each radionuclide which may be incinerated. Neither passage specifies or suggests that the list of isotopes and maximum quantities which incinerator personnel may incinerate are guidelines and need not to be met.

As restated below, Violation A.2. is corrected to clarify that the licensee's April 11, 1986 letter is the origin of the requirement regarding specific limits for each radionuclide which may be incinerated.

License Condition No. 20 requires the licensee to conduct its program in accordance with the statements, representations, and procedures contained in an application dated August 13, 1984, including the attachment dated August 9, 1984, and a letter dated April 11, 1986.

Item 14, of the August 9, 1984, attachment states that incinerator personnel have a list of isotopes and maximum quantities which they may incinerate. The letter dated April 11, 1986 states that incinerator operators are given specific limits for each radionuclide which may be incinerated.

The licensee's "incinerator burning limits" list limits the hourly incinerator burn limits for I–125 and I–129 to 0.19 microcuries and 0.08 microcuries, respectively.

Contrary to the above, licensee, incinerator personnel incinerated licensed materials in excess of hourly incinerator burn limits on several occasions in 1990. Specifically, an average of 3.3 microcuries of I–125 was burned per hour on January 2 and an average of 3.3 microcuries of I–125 was burned per hour on May 1, 1990. In addition, on February 16, 1990, an average of 0.83 microcuries of I–125 was burned per hour and on May 1, 1990, an average of 0.63 microcuries of I–129 was burned per hour.

Restatement of Violation A.3

10 CFR 20.201(b) requires that each licensee make such surveys as may be necessary to comply with the requirements of part 20 and which are reasonable under the circumstances to evaluate the extent of radiation hazards that may be present. As defined in 10 CFR 20.201(a), "survey" means an evaluation of the radiation hazards incident to the production, use, release, disposal, or presence of radioactive materials or other sources of radiation under a specific set of conditions.

Contrary to the above, the licensee did not make surveys to assure compliance with 10 CFR 20.303, which limits the daily, monthly and annual quantity of licensed material which may be disposed of by release into a sanitary sewerage system. Specifically, as of December 27, 1990, the licensee did not make surveys necessary to comply with daily and monthly sanitary sewerage disposal limits since approximately 50% of 250 authorized users had not reported 1990 sanitary sewer disposal information to the Radiation Safety Office.

Summary of Licensee's Response to Violation A.3

The licensee denies this violation and states that due to the large volume of sewage released daily by the University, it is impossible for the licensee to exceed the daily or monthly concentration limits in part 20. The licensee implies that this obviates the need for the survey since 10 CFR 20.201 only requires such surveys as may be necessary to comply with the requirements of part 20. The licensee's response specifies the daily sewage volume released by the University and the quantity (activity) of various isotopes it could dispose into the sewage system and satisfy 10 CFR 20.303 concentration limits. The licensee states, "the fact that 50% of 250 authorized users had not reported sewer disposal as of December 27, 1990, is irrelevant."

NRC Evaluation of Licensee's Response to Violation A.3

10 CFR 20.201(b) requires surveys (evaluations) as may be necessary to comply with the requirements of Part 20. As of the last day of the NRC site inspection, December 27, 1990, the licensee had not performed an evaluation to demonstrate compliance with 10 CFR 20.303, which limits the daily, monthly, and annual quantity of licensed material which may be disposed of by release into the sanitary sewerage system. The violation was issued because the evaluation had not been performed. The fact that the licensee subsequently performed the evaluation and demonstrated that it had been in compliance with the release limits does not change the fact that the violation occurred.

Further, 10 CFR 20.303(d) limits the gross quantity of all licensed material released into the sanitary sewerage system to one curie per year (excluding tritium and carbon-14 which cannot exceed five curies and one curie per year, respectively) regardless of the sewage release rate. Thus, the licensee's very large sewage release rate is not the controlling factor and does not obviate the need for the evaluation.

The licensee contends that it is irrelevant that 50% of authorized users had not reported sewer disposal information as of December 27, 1990. However, complete and timely authorized user disposal data is necessary to evaluate the annual gross quantity of licensed material discharged into the sanitary sewerage system to ensure compliance with 10 CFR 20.303(d). Absent timely and continual monitoring of authorized user sewer disposal data, the licensee would be unaware of its 10 CFR 20.303(d) compliance status until the data was summed at the end of the year. As a result, sewer disposal limits could be unknowingly exceeded sometime during a given year. The licensee should be well aware of this problem since, as reported in Inspection Report No. 030–02764/89002(DRSS), this actually did occur in 1986.

Restatement of Violation A.6

10 CFR 20.201(b) requires that each licensee make such surveys as may be necessary to comply with all sections of part 20. As defined in 10 CFR 20.201(a), "survey" means an evaluation of the radiation hazards incident to the production, use, release, disposal, or presence of radioactive materials or other sources of radiation under a specific set of conditions.

Contrary to the above, as of December 14, 1990, the licensee had not made evaluations (surveys) to assure compliance with 10 CFR 20.101(a), which limits the radiation exposure to the whole body and extremities. Specifically, radiation exposure evaluations were not made for the exposure period August 1–30, 1990, to evaluate the radiation exposure of at least 30 research laboratory workers who failed to submit their whole body and extremity personnel monitoring devices for vendor processing.

This is a repeat violation.

Summary of Licensee's Response to Violation A.6

The licensee denies the violation and contends that its experience from documented radiation exposure reports confirms that exposure to research laboratory personnel is minimal and, therefore, these individuals are not required to wear personnel dosimetry devices pursuant to 10 CFR 20.202. Thus, the licensee contends that deficiencies in evaluating personnel dosimetry devices for research personnel are irrelevant.

NRC Evaluation of Licensee's Response to Violation A.6

In effect, the licensee claims that it has very low radiation exposure reports from the previous film badges worn by the researchers in question, and that these reports constitute the licensee's survey or evaluation to show that personnel monitoring equipment is not required for these individuals pursuant to with 10 CFR 20.202(a)(1). This would be acceptable if the licensee, at that time, had had assurance, by way of administrative controls or by means of evaluations, that the licensed activities performed by the individuals in question had not changed during the period in which they failed to submit their dosimetry devices for processing. However, licensee personnel informed the inspector at the time of the inspection that this was not the case, and the licensee has provided no new information to show that such administrative controls or evaluations were in fact in place at that time.

Restatement of Violation A.8

License Condition No. 20 requires the licensee to conduct its program in accordance with the statements, representations, and procedures contained in a letter dated April 11, 1986.

Item 8 of the April 11, 1986 letter requires that incinerator operators be instructed in the proper way to record amounts of radioactive material incinerated and be given specific limits for each radionuclide which may be incinerated, and that this training and retraining (if necessary) be available as required.

Contrary to the above, as of November 27, 1990, the individual who conducted incinerator operations in early 1990 was not adequately instructed to ensure that radioactive burn limits were not exceeded.

Summary of Licensee's Response to Violation A.8

The licensee denies the violation and states that the incinerator operator was adequately instructed in his responsibilities. The licensee states that it provided initial training and that the radiation safety office reviewed the incinerator operator's procedures during 1990.

NRC Evaluation of Licensee's Response to Violation A.8

Section 6 of Inspection Report No. 030–02764/90001(DRSS), states: "The incinerator operator stated during inspector interviews that he was confused and unsure of his responsibilities for radioactive material incineration." Had the operator been adequately instructed, and had the necessary retraining been provided, he would not have been confused and would not have incinerated amounts of radioactive material in excess of specific limits provided to him.

Restatement of Violation A.18

License Condition No. 20 requires the licensee to conduct its program in accordance with the statements, representations, and procedures contained in an application dated August 13, 1984, including an attachment dated August 9, 1984.

Item 14, "Solid Waste Incineration," of the August 9, 1984 attachment to the application requires that materials brought to the incinerator be clearly labeled as to contents.

Contrary to the above, on September 25, 1990, several bags of unspecified radioactive wastes were delivered to the incinerator for incineration and were not labeled as to contents.

This is a repeat violation.

Summary of Licensee's Response to Violation A.18

The licensee denies the violation and states that the bags were believed to be correctly labeled when placed into the freezer and the labels fell off during storage.

NRC Evaluation of Licensee's Response to Violation A.18

Item 14 of the August 9, 1984 attachment to the application requires that materials brought to the incinerator, not the freezer, be clearly labeled as to contents. If the labels fell off during storage, it was the licensee's responsibility to ensure that the bags were properly relabeled.

Restatement of Violation B

10 CFR 20.105(b) requires that, except as authorized by the Commission, radiation levels in unrestricted areas be limited so that an individual who was continuously present in the area could not receive a dose in excess of 2 millirems in any hour or 100 millirems in any seven consecutive days. As defined in 10 CFR 20.3(a)(17), an unrestricted area is any area access to which is not controlled by the licensee for purposes of protection of individuals from exposure to radiation and radioactive materials.

Contrary to the above, on December 11, 1990, the licensee allowed the creation of radiation levels in an unrestricted area such that if an individual were continuously present in the area, he could have received a dose in excess of 2 millirems in any one hour or 100 millirems in any seven consecutive days, and such levels had not been authorized by the Commission. Specifically, radiation levels of approximately 50 millirems per hour existed in unrestricted accessible areas near the source shutter region of the veterinary teletherapy unit located in the Medical Science Building Room E 357. This area was unrestricted because the door to the room was open and unlocked, licensee personnel were not in attendance, and access to the room was not controlled by the licensee.

Summary of Licensee's Response to Violation B

The licensee denies the violation. The licensee contends that Medical Science Building Room E357 is a restricted area because the door to the room is labeled "Caution Radiation Area" and the door to the outer area is labeled "Authorized Personnel Only". The licensee also contents that NRC staff previously indicated that a "Caution Radiation Area" sign was sufficient for designating a restricted area.

NRC Evaluation of Licensee's Response to Violation B

As defined in 10 CFR 20.3(a)(14), a restricted area is any area access to which is controlled by the licensee for purposes of protection of individuals from exposure to radiation and radioactive materials. Conversely, as defined in 10 CFR 20.3(a)(17), an unrestricted area is any area access to which is not controlled by the licensee for purposes of protection of individuals from exposure to radiation and radioactive materials. While a "Caution Radiation Area" sign fulfills the requirement of 10 CFR 20.203(b), the mere posting of precautionary signs on a door does not ensure that individuals will not enter the area and therefore does not define an area as either restricted or unrestricted. Positive access control can only be achieved by mechanical means such as locking the area or by the presence of license personnel who have been instructed to control access.

As stated in section 23 of Inspection Report No. 030–02764/90001(DRESS), the inspectors observed the outer area door ajar and the door to the teletherapy unit irradiation area also ajar with the key to the treatment room door in the door lock. Both areas were unattended. Furthermore, the key to operate the teletherapy unit and expose the source was on the key ring attached to the room key. In this instance, in the absence of positive access control, the area in question was, at that time, an unrestricted area.

II. Violations Denied in Part

Restatement of Violation A.4

License Condition No. 20 requires the licensee to conduct its program in accordance with the statements, representations, and procedures contained in a letter dated April 11, 1986.

Item 9(a) of the April 11, 1986 letter requires that laboratories be surveyed with a wipe test at least monthly when less than millicurie amounts of "unsealed" radionuclides are used and weekly when millicurie amounts are used.

Contrary to the above, research laboratory survey (wipe tests) have not, in all cases, been performed at the required frequencies, as evidenced by the following examples:

a. Crosley Building Room No. 1406, where microcurie quantities of unsealed C–14 were used on at least a monthly basis from September 1989 to December 1990, was not wipe tested during that time.
b. Crosley Building Rooms No. 300 and 309, where millicurie quantities of unsealed Tc–99 and Tc–99m were used on a weekly basis from March

1990 to December 1990, were not wipe tested weekly on at least ten occasions during this period.

c. Crosley Building Room No. 1307, where microcurie quantities of unsealed C–14 were used in June and October 1990, was not wipe tested during either of these two months of use.

d. Medical Sciences Building Room No. 6205, where millicurie quantities of unsealed S–35 were used on October 4 and 11, 1990, was not wipe tested during that month.

This is a repeat violation.

Summry of Licensee's Response to Violation A.4

The licensee denies example (a) in part and example (b) in whole and admits examples (c) and (d). In response to example (a), the licensee acknowledges that required surveys were not conducted in September and October 1990 and claims that its records show that surveys were conducted in November and December 1990 for the indicated laboratory. However, the licensee makes no response regarding the missing surveys between September 1989 and August 1990 and does not provide documentation of the claimed November and December 1990 surveys. With regard to example (b), the licensee contends that all surveys were performed as required and that the "missed" surveys were during periods of no use.

NRC Evaluation of Licensee's Response to Violation A.4

With regard to example (a), the licensee provided no documentation to support its contention that surveys were conducted in two of the months cited; therefore NRC does not intend to amend the example at this time. In any event, example (a) is still a valid example because the licensee does not dispute that surveys were not conducted during there remaining 14 months specified in the example.

With regard to example (b), NRC is withdrawing that example based on the licensee's explanation that the "missed" surveys were during periods of no use. Violation A.4 remains a violation, however, since examples (a), (c), and (d) remain valid examples; and because the licensee admits that the wipe tests were not in all cases performed at the required frequencies.

Restatement of Violation A.7

10 CFR 19.12 requires, in part, that all individuals working in a restricted area be instructed in the precautions and procedures to minimize exposure to radioactive materials, in the purpose and functions of protective devices employed, and in the applicable provisions of the Commission's regulations and licenses.

Contrary to the above, individuals who were working in restricted areas had not been instructed in the precautions and procedures to minimize exposure, and the applicable provisions of the Commission's regulations and licenses. Specifically, as of December 4, 1990, two Central Pharmacy employees and nine Grounds and Transportation Department employees were not instructed in the health protection problems associated with exposure to radioactive materials or the precautions or procedures to minimize exposure; and the two Pharmacy employees worked in the radioactive material package receipt/storage area, a restricted area, and the nine Grounds employees routinely frequented restricted areas in the performance of their duties.

Summary of Licensee's Response to Violation A.7

The licensee denies the violation in part. Specifically, the licensee denies that one of the two Central Pharmacy employees in question was not instructed as required. The licensee admits that the nine Grounds and Transportation Department employees were not instructed as required.

NRC Evaluation of Licensee's Response to Violation A.7

As stated in Section 6.d. of Inspection Report No. 030–02764/90001(DRSS), the NRC conclusion about the two Central Pharmacy employees is based on inspector interviews. The licensee has provided no further explanation or documentation to support its position; therefore, NRC does not intend to amend the citation at this time. In any event, Violation A.7 remains a violation since the licensee admits that at least ten of the eleven individuals specified in the violation had not been instructed as required.

Restatement of Violation A.10

Licensee Condition No. 20 requires the licensee to conduct its program in accordance with the statements, representations, and procedures contained in a letter dated May 17, 1990.

The May 17, 1990 letter, with enclosure, requires the Radiation Safety Officer, through the Radiation Safety Office staff, to conduct audits on a semi-annual schedule of each laboratory or area authorized for use of licensed material.

Contrary to the above, from June 14, 1990 through December 31, 1990, the Radiation Safety Office staff did not audit approximately 50% of the 700 laboratories or areas where radioactive material is authorized for use.

Summry of Licensee's Response to Violation A.10

The licensee admits the violation in part but states that all areas were surveyed for radiation and that certain elements of an audit were performed during the radiation surveys. The licensee states that it was unaware that the audit requirement was incorporated into its NRC license.

NRC Evaluation of Licensee's Response to Violation A.10

Although the licensee states that some elements of an audit were performed during laboratory radiation surveys, it admits that audits were not completed as required. NRC expects the licensee to be cognizant to applicable regulatory requirements and commitments incorporated by reference into its license.

III. Licensee's Request for Mitigation of Civil Penalty

Restatement of Licensee's Request for Reconsideration Regarding Escalation Based on Identification and Reporting

The licensee argues that it reported twelve of the alleged violations, identified six of the violations that the University either admits of admits in part, and corrected many violations prior to the time that NRC conducted its inspection in 1990. (Regarding this latter point), the licensee gives as examples A.4, A.5, A.7, A.12, A.13 and A.15.) Under these circumstances, the licensee contends that escalation of the base civil pentaly by 50% under Section V.B.1. of the Enforcement Policy is an abuse of discretion. With respect to the violations that the licensee admits, but did not identify, the licensee believes that NRC has not provided any basis which demonstrates that the licensee should have reasonably discovered the violation before the NRC identified it.

NRC Evaluation of Licensee's Request for Reconsideration Regarding Escalation Based on Identification and Reporting

The licensee was well aware of many of the violations, since nine of them were identified during a 1989 inspection and were found again during the 1990 inspection. In addition, the licensee was aware of deficiencies in key program areas and had not corrected these weaknesses. This indicates that the licensee, while aware of the existence of some of the violations, had not taken immediate effective action in 1989 to

correct the problems. The NRC Enforcement Policy provides in Paragraph V.B.1, "* * * No consideration will be given to a reduction in penalty if the licensee does not take immediate action to correct the problem upon discovery * * *" Moreover, although the licensee identified some violations, 13 of the 21 violations (more than 50%) were identified solely by the NRC, and those violations could have been identified earlier by the licensee through increased management attention and an effective self-audit program.

Restatement of Licensee's Request for Reconsideration Regarding Escalation Based on Past Performance

The licensee recognizes that the basis for escalating the base civil penalty by 100% due to past poor performance is the fact that the NRC, in an enforcement action dated July 2, 1990, issued a citation for a Severity Level II program with regard to the University Radiation Safety Program. As the licensee notes, NRC found that many of the currently identified violations are repetitions of problems which resulted in the prior enforcement action. The licensee contends that NRC has ignored the fact that the 1990 inspection period followed the July 1990 enforcement action by a little more than four months. While some of the alleged violations are characterized by the NRC as repeat violations, the University views these alleged violations as examples of continuing problems for which the four month time period between July and November 1990 was not sufficient for corrective actions to be fully implemented and perfected.

NRC Evaluation of Licensee's Request for Reconsideration Regarding Escalation Based on Past Performance

The NRC acknowledges that the enforcement action for the 1989 NRC inspection (EA 90–040) was forwarded to the licensee by letter dated July 2, 1990. However, the enforcement action resulted from problems identified during an inspection conducted on August 25, 1989 and during the period September 19, 1989 through October 6, 1989. Findings from this inspection were initially conveyed to licensee representatives at the conclusion of the site inspection on October 6, 1989.

Although EA 90–040 was issued on July 2, 1990 the University was provided with detailed NRC inspection and consultant audit findings, including description of specific problems and program weaknesses, on several occasions between October 6, 1989 and February 16, 1990. Since the subsequent inspection of the NRC licensed program was conducted during the period November 26, 1990 through December 27, 1990, the licensee had approximately twelve months to correct known problems. Therefore, ample time was available to the licensee to fully implement lasting and effective corrective actions for 1989 inspection findings.

As pointed out by the licensee, the NRC acknowledged the initiatives taken by licensee management in 1989 to identify and correct problems. These initiatives resulted in the NRC's decision not to issue a civil penalty for the Severity Level II problem identified in the Notice of Violation dated July 2, 1990 (EA 90–040).

Many of the currently identified violations are repetitions or continuations of problems which resulted in EA 90–040. The NRC Enforcement Policy provides in paragraph V.B.3., that in weighing past performance, consideration is given to the effectiveness of previous corrective actions for similar problems and prior performance in the area of concern. Failure to implement effective and lasting corrective action for prior similar problems, warrants an increase in the civil penalty.

Restatement of Licensee's Request for Reconsideration Regarding Escalation Based on Duration

The licensee correctly notes that NRC further increased the base civil penalty by 100% due to the duration of the problem concerning the lack of adequate control of licensed activities because many of the specific violations, including the more safety significant violations associated with inventory of radioactive materials, disposal of radioactive waste through the sanitary sewers, and personal dosimetry, existed for periods in excess of one year. The licensee denies the alleged violations regarding inventory of radioactive materials, disposal of radioactive waste through the sanitary sewers and personal dosimetry, all of which the NRC claims are the more safety significant violations (A.1, A.3 and A.6). Moreover, the licensee asserts that, at the present time, it is in full compliance with respect to all of the alleged 21 violations.

NRC Evaluation of Licensee's Request for Reconsideration Regarding Escalation Based on Duration

The NRC Enforcement Policy provides in paragraph V.B.6. that a greater civil penalty may be imposed if violations continue. For example, if the licensee is aware of a condition which results in ongoing violations and fails to initiate effective corrective actions, it may be considered for additional civil penalties. Although licensee senior management became aware of many of the programmatic weaknesses in 1989 and some corrective actions were initiated, these actions were not properly focused to achieve adequate regulatory compliance. As a result, many of the problems still existed at the time of the November 26–December 27, 1990 inspection.

The licensee contends that many of the citations were not valid, including those deemed by the NRC as more safety significant. Moreover, the licensee states it is in full compliance at this time. However, as explained above, the NRC has found no basis for withdrawing any of the violations (example A.4.b is being withdrawn) identified in the Notice of Violation and Proposed Imposition of Civil Penalty. Furthermore, full compliance is expected of all NRC licensees. The fact that the licensee is now in full compliance has no bearing on the assessment of the civil penalty, which is for the failure to completely correct a breakdown in the control of several significant aspects of the licensee's radiation safety program, a problem that existed at the time of the 1990 inspection.

IV. NRC Conclusion

Based on the information presented by the licensee and evaluated by the NRC, NRC concludes that the violations did occur and that the licensee has not provided an adequate basis for mitigation of the civil penalty. Consequently, the proposed civil penalty in the amount of $8,750 should be imposed.

[FR Doc. 91–23478 Filed 9–27–91; 8:45 am]
BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Request for Clearance of Form SF 2823

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, chapter 35), this notice announces a request for clearance of an information collection. Form SF 2823, Designation of Beneficiary (Federal Employees' Group Life Insurance Program), is for use by any Federal employee or annuitant covered by the

Federal Employees' Group Life Insurance Program to instruct the Office of Federal Employees' Group Life Insurance how to distribute the proceeds of his/her life insurance when the statutory order of precedence does not meet his/her needs.

Although as indicated, this form can be used by both annuitants and employees, this clearance applies only to annuitants; approximately 1,000 forms SF 2823 will be completed per year. The form requires 15 minutes to fill out. The annual burden is 250 hours.

For copies of this proposal, contact C. Ronald Trueworthy, on (703) 908–8550.

DATES: Comments on this proposal should be received on or before October 30, 1991.

ADDRESSES: Send or deliver comments to—

C. Ronald Trueworthy, Agency Clearance Officer, U.S. Office of Personnel Management, 1900 E. Street, NW., CHP 500, Washington, DC 20415, and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., room 3002, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mary Beth Smith-Toomey (202) 606–0623.

Office of Personnel Management.

Constance Berry Newman,

Director.

[FR Doc. 91–23471 Filed 9–27–91; 8:45 am]

BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Incorporated

September 24, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f–1 thereunder for unlisted trading privileges in the following securities:

He-Ro Group, Ltd.
Common Stock, $.01 Par Value (File No. 7–7266)

The Money Store, Inc.
Common Stock, No Par Value (File No. 7–7267)

Maxum Health Corp.
Common Stock, $.01 Par Value (File No. 7–7268)

Nuveen Insured Quality Municipal Opportunity Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–7269)

The Ziegler Company
Common Stock, $1.00 Par Value (File No. 7–7270)

IBP, Inc.
Rights to Purchase Additional Shares of Common Stock (File No. 7–7271)

Marifarms, Inc.
Common Stock, $.01 Par Value (File No. 7–7272)

These securities are listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before October 16, 1991, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91–23418 Filed 9–27–91; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–29713; File No. SR–NASD–91–21]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to the OTC Bulletin Board Service

September 20, 1991.

On May 3, 1991, the National Association of Securities Dealers, Inc. ("NASD") submitted to the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change (File No. SR–NASD–91–21), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] to amend the OTC Bulletin Board Service ("Service") to implement certain system enhancements and to request partial accelerated approval for an interim extension of the Service through November 30, 1991. The Commission granted accelerated approval of the interim extension and noticed the proposed rule change in the **Federal Register** for public comment.[2] No comments were received in response to the solicitation. This order approves the proposed rule change to implement the system enhancements.

On May 1, 1990, the Commission issued an order approving the operation of the NASD's OTC Bulletin Board Service for a pilot term of one year.[3] The Service provides an electronic quotation medium for NASD members to enter and display quotations in non-NASDAQ OTC securities in which they are registered as market makers.[4]

Based on its experience with the administration of the Service over the last year, the NASD identified several enhancements that would make the Service more responsive to the operational needs and trading practices of member firms. The NASD, therefore, has requested approval of the following enhancements: (1) Access to Bulletin Board functionality on page one of the NASDAQ Workstation service; (2) a query capability to allow retrieval of all market makers' quotations in an unlisted security in the form of ranked bids and offers (*i.e.*, bids arrayed from the highest to the lowest and offers from the lowest to the highest with the corresponding market maker identifiers); (3) modification of the bid/offer price fields to 6 digits on either side of a decimal; and (4) calculation and dissemination of an inside market for each unlisted security in which market makers have entered priced quotations (either one or two-sided).

Because market makers are precluded from entering indicative bids/offers (*i.e.*, non-firm bid/offer prices) into the Service for domestic securities,[5] it is

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] *See* Securities Exchange Act Release No. 28946 (March 6, 1991), 56 FR 10932.

[3] Securities Exchange Act Release No. 27975 (May 1, 1990), 55 FR 19124.

[4] The principal operational features of the Service were fully described in File No. SR–NASD–88–19. See Securities Exchange Act Release No. 25949 (July 28, 1988), 53 FR 29096.

[5] See Securities Exchange Act Release No. 28946 (March 6, 1991), 56 FR 10932. Market makers may enter unpriced indications of interest or bid wanted/offer wanted indications, however, in domestic securities.

now possible for the NASD to calculate and display an inside market to member firms based entirely upon firm, priced entries. The NASD stated that it believes that the availability of such quotation information should expedite price discovery in individual securities and foster the execution of retail orders at the best available price. Foreign securities/ADRs remain subject to the twice-daily, update limitation, and, therefore, priced bids/offers in theses securities remain indicative. To the extent that market makers enter indicative bids/offers for unlisted foreign securities/ADRs, inside markets would be calculated and disseminated in virtually the same manner as they are for domestic issues quoted in the Service. However, the indicative character of these quotations will be clearly identified to differentiate them from inside quotations for domestic securities quoted in the Service.

The NASD also stated it will continue to work closely with the Commission staff in developing enhancements to the Service mandated by passage of the Securities Enforcement Remedies and Penny Stock Reform Act of 1990,[6] including the phased implementation of last sale reporting.[7]

The Commission has determined that it is appropriate to approve the NASD's proposed rule change because the Commission believes it is consistent with sections 15A(b) (6) and (11), 17B, and 11A(a)(1) of the Act.[8] Section 15A(b)(6) requires, among other things, that the NASD's rules be designed to promote just and equitable principles of trade, to facilitate transactions in securities, and to protect investors and the public interest. Section 15A(b)(11) authorizes the NASD to adopt rules governing the form and content of quotations for securities traded over-the-counter for the purposes of producing fair and informative quotations, preventing misleading quotations, and promoting orderly procedures for collecting and disseminating quotations.

Section 17B requires the Commission to facilitate the development of one or more automated quotation systems for the collection and dissemination of information for all penny stocks. That section also states that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to improve significantly the information available with respect to quotations for and transactions in penny stocks.

Section 11A(a)(1) sets forth the Congressional findings and policy goals respecting the development of a National Market System. Specifically, the Congress found that new data processing and communications techniques should be applied to improve the efficiency of market operations, broaden the distribution of market information, foster competition among market participants and enhance opportunities for the best execution of customer orders.

By implementing these system enhancements, the NASD is improving the availability of quotation and transaction information in penny stocks and facilitating the execution of customer orders at the best available price and fair dealing among the Service market makers. These enhancements should further the efficiency of pricing and assist market makers in negotiating the execution of customer orders at the best available price.

Accordingly, the Commission believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder, and that it is appropriate to approve the proposed rule change.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-23415 Filed 9-27-91; 8:45 am]

BILLING CODE 8010-01-M

[6] Securities Enforcement Remedies and Penny Stock Reform Act of 1990, signed October 15, 1990, Pub. L. 101-429. 15 U.S.C. 78q-2 (1990).

[7] See letter from Frank J. Wilson, Executive Vice President and General Counsel, NASD, to William H. Heyman, Director, Division of Market Regulation, SEC, dated August 20, 1991.

[8] 15 U.S.C. 78o-3 (1982).

[9] 17 CFR 200.30-3(a)(12).

[Release No. 34-29711; File No. SR-NASD-91-33]

Self-Regulatory Organizations; Notice of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Amendments to the Uniform Application for Securities Industry Registration or Transfer, Form U-4 and the Uniform Termination Notice for Securities Industry Registration, Form U-5

September 20, 1991.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 23, 1991, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD has proposed amendments to the Uniform Application for Securities Industry Registration or Transfer, Form U-4 and Uniform Termination Notice for Securities Industry Registration, Form U-5. The proposed changes to Form U-4 and Form U-5 are being made in response to the enactment of the Securities Act Amendments of 1990 and The Securities Enforcement Remedies and Penny Stock Reform Act of 1990. These new laws will require several changes to the disciplinary disclosure questions in Form U-4 and U-5. Certain other minor changes were requested by the Commodity Futures Trading Commission and the National Futures Association.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The NASD is proposing to make certain amendments to the Uniform Application for Securities Industry Registration or Transfer, Form U-4 and the Uniform Termination Notice for Securities Industry Registration, Form U-5. The proposed changes to these forms are the result of the enactment of The Securities Acts Amendments of 1990 [1] and the Securities Enforcement

[1] Pub. L. 101-550, November 15, 1990, 104 Stat. 2713.

Remedies and Penny Stock Reform Act of 1990.[2] These new laws which expand the definition of statutory disqualification in section 3(a)(39) of the Act and expand the enforcement powers of the Securities and Exchange Commission ("SEC" or "Commission") require that changes be made to the Forms U–4 and U–5. Certain minor changes to these forms were also requested by the Commodity Futures Trading Commission ("CFTC") and the National Futures Association ("NFA").

The Form U–4 is being amended to provide for the following:

Page 1—A minor change was made to the explanation for the Series 3 and Series 5 exams by adding the word "examination." This change was requested by the NFA for the Series 3 as there is some confusion as to why the box should be checked since it does not reflect a category of registration but only an exam request. Since the same situation was true for the Series 5, "examination" was added to that line as well.

Page 3—Page 3 contains several changes to the disciplinary questions as a result of the enactment of the Securities Act Amendments of 1990 which became effective November 15, 1990. This law specifies that certain actions taken by foreign financial regulatory authorities will now be considered statutory disqualifications under the Act. In order to accommodate this law, the definition of a foreign financial regulatory authority is being added to the form and language reflecting this change has been inserted in certain questions under Item 22, where appropriate.

The Securities Enforcement Remedies and Penny Stock Reform Act of 1990 which became effective October 15, 1990 provided the Securities and Exchange Commission with additional enforcement remedies for certain securities violations. Item 22D5 has been added to reflect these enforcement powers which include cease and desist authority and the ability to impose a civil monetary penalty.

Page 4—A minor change has been made to the firm certification on the bottom of Page 4. The last sentence certifies that the firm has communicated with the employee's previous employers for the past three years. The CFTC had a five-year rule, which was noted in parenthesis following this sentence. Due to a recent rule change, the CFTC now requires employment verification for three years, so the clause relating to commodities has been deleted.

[2] Pub. L. 101–429, October 15, 1990, 104 Stat. 931.

The Form U–5 is being amended to provide for the following:

The instructions and form have been modified to include changes to the disciplinary questions consistent with the Form U–4. There has also been added an optional certification section so that previously filed information does not have to be filed on subsequent forms.

Representatives of the North American Securities Administrators Association ("NASAA") and the NASD considered these modifications and NASAA and the NASD Board of Governors have approved the amendments which are the subject of this filing.

The NASD believes the proposed rule change is consistent with section 15A(b)(6) under the Act, as amended. In pertinent part, section 15A(b)(6) mandates that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest, among other things. The NASD believes the proposed rule change is fully consistent with the NASD's authority to adopt appropriate qualifications and registration requirements for persons associated with NASD members or applicants for NASD membership. Article IV, section 2 of the NASD By-Laws authorizes the Board to prescribe the form used by any person who wishes to make application for registration with the NASD. The NASD believes the proposed changes to these forms are consistent with and will help implement the Securities Act Amendments of 1990 and the Securities Enforcement Remedies and Penny Stock Reform Act of 1990.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change imposes any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comment

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room.

Copies of the filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by October 21, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–23417 Filed 9–27–91; 8:45 a.m.]

BILLING CODE 8010–01–M

[Release No. 34–29714; File No. SR–PHLX–91–11]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Specialists' Responsibilities to Handle Limit Orders When Options Orders Become Subject to a Cancellation/Replacement Process

September 20, 1991.

On May 20, 1991, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act

of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change (1) establishing procedures governing floor broker notification and the maintenance of limit order book priority of orders subject to a cancel/replacement process and (2) requiring floor official approval, 30 minutes before the opening, of a specialist's refusal to accept stop and/or stop limit orders on the book.

The proposed rule change was published for comment in Securities Exchange Act Release No. 29424 (July 9, 1991), 56 FR 32460 (July 16, 1991). No comments were received on the proposed rule change.[3]

First, the proposal adds new Options Floor Procedure Advice ("OFPA") A–6 to Exchange rules. OFPA A–6 requires a specialist to notify floor brokers in the event orders placed on the book become subject to a cancel/replacement process, as well as to ensure that, to the extent possible, any such replacement orders will not incur a loss of the priority they established prior to the cancel/replacement process. Current Exchange rules do not require a specialist to give this notification or protect the priority of an order subject to the cancel replacement process. The Exchange believes that these procedures are consistent with section 6(b)(5) of the Act in that they protect investors and the public interest by ensuring that floor brokers do not gain priority for their orders simply by knowing in advance that an event warranting a complete cancel/replacement process is about to occur.

Second, the proposal would transfer the current provisions of OFPA A–6 to OFPA A–5, which pertains to the execution of stop and stop limit orders. Two changes would be made in the provisions to be transferred to OFPA A–5; (1) A specialist would be required to receive floor official approval of the specialist's refusal to accept stop and/or stop limit orders on the book 30 minutes before the opening, instead of 45 minutes; and (2) the return of all stop and stop limit orders entrusted to a specialist must be made to the responsible member immediately after floor official approval, instead of one half hour before the opening. The PHLX believes that requiring floor official approval 30 minutes before the opening, instead of 45 minutes, is necessary because the PHLX membership is not required to be present prior to 30 minutes before the opening. Further, the PHLX believes that requiring a specialist to return all refused stop and stop limit orders immediately after floor official approval, instead of 30 minutes before the opening, is appropriate in light of the proposed requirement that floor officials approve such refusal 30 minutes before the opening.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6.[4] First, the Commission finds that the proposal to require a specialist to notify floor brokers in the event orders placed on the book become subject to a cancel/replacement process and to ensure that, to the extent possible, any such replacement orders will not incur a loss of the priority they established prior to the cancel/replacement process is consistent with sections 6(b)(5) and 11(a) of the Act. Specifically, the Commission finds that these procedures protect investors and the public interest by lessening the possibility that a floor broker could gain priority for his orders simply by knowing in advance that an event warranting a complete cancel/replacement process is about to occur. In addition, the Commission believes the notification procedures will avoid instances where public investors are unaware of the fact that their limit orders have been cancelled thereby allowing them to better implement their investment strategies.

Second, the Commission finds the proposal to require floor official approval of a specialist's refusal to accept stop and/or stop limit orders to occur 30 minutes before the opening, instead of 45 minutes, is consistent with section 6(b)(5) in that it perfects the mechanisms of a free and open market by making the deadline for receiving floor official approval consistent with Exchange OFPA E–1 with requires member firms to have a representative on the trading floor 30 minutes before the opening. It is reasonable for the PHLX to align its floor official approval requirement with the members' obligation to be on the floor 30 minutes before the opening. The Commission, in turn, finds that requiring specialists to return refused stop and/or stop limit orders immediately after receiving floor official approval is consistent with the 30 minute approval deadline since it would be impossible for a specialist who receives approval exactly 30 minutes before the opening to comply with that deadline. The Commission believes that requiring a specialist to return refused stop and/or stop limit orders immediately after receiving floor official approval will ensure that PHLX members are given timely notice that one of their customer's orders has been refused. The Commission also notes that Exchange rules will still require that the floor be notified of floor official approval of the refusal 30 minutes before the opening.

Third, the Commission finds that transferring the requirements pertaining to the return of stop and stop limit orders from OFPA A–6 to OFPA A–5 is a proper administrative decision of the PHLX and does not alter the substance or effect of the obligations.

It Is Therefore Ordered, Pursuant to section 19(b)(2) of the Act,[5] that the proposed rule change (SR–RHLX–91–11) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–23416 Filed 9–27–91; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1990).

[3] On June 10, 1991, the PHLX amended the proposed rule change to state the purpose for requiring that floor official approval of the refusal to accept stop and/or stop limit orders be given 30 minutes instead of 45 minutes before the opening. See letter from Edith Helman, Law Clerk, PHLX, to Monica Michelizzi, Staff Attorney, SEC, dated June 10, 1990.

[4] 15 U.S.C. 78f (1988).

[5] 15 U.S.C. 78s(b)(2) (1988).

[6] 17 CFR 200.30–3(a)(12) (1990).

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Incorporated

September 24, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f–1 thereunder for unlisted trading privileges in the following securities:

American Municipal Term Trust
Common Stock, $.01 Par Value (File No. 7–7273)

Nuveen Insured Opportunity Fund, Inc.
Common Stock, $.01 Par Value B (File No. 7–7274)

American Municipal Term Trust II
Common Stock, $.01 Par Value B (File No. 7–7275)

Plains Resources, Inc.
Common Stock, $.10 Par Value B (File No. 7–7276)

Minnesota Municipal Term, Inc.
Common Stock, $.01 Par Value (File No. 7–7277)

The Ziegler Company, Inc.
Common Stock, $1 Par Value B (File No. 7–7278)
Texas Instruments
Preferred, $25 Par Value B (File No. 7–7279)
The Money Store, Inc.
Common Stock, No Par Value (File No. 7–7280)
Blackstone Municipal Target Term Trust, Inc.
Common Stock, $.01 Par Value B (File No. 7–7281)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before October 16, 1991, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91–23419 Filed 9–27–91; 8:45 am]

BILLING CODE 8010–01–M

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; Michaels Stores, Inc., Common Stock, $0.01 Par Value (File No. 1–9338)

September 24, 1991.

Michaels Stores, Inc., ("Company") has filed an application with the Securities and Exchange Commission ("Commission") pursuant to section 12(d) of the Securities Exchange Act of 1934 and rule 12d2–2(d) promulgated thereunder to withdraw the above specified security from listing and registration of the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

The Board of Directors of the Company approved resolutions by unanimous written consent on July 22, 1991 to withdraw the Company's Common Stock from listing on the Amex and, instead, list such Common Stock on the National Association Securities Dealers Automated Quotations/National Market System ("NASDAQ/NMS"). According to the Company, the decision of the Board followed a lengthy study of the matter, and was based upon the belief that listing of the Common Stock on NASDAQ/NMS will be more beneficial to its shareholders than the present listing on the Amex because:

(1) The Company believes that the NASDAQ/NMS system of competing market makers will result in increased visibility and sponsorship for the Common Stock than is presently the case with the single specialist assigned to the Common Stock on the Amex;

(2) The Company believes that the NASDAQ/NMS will offer the Company's shareholders more liquidity than presently available on the Amex. On NASDAQ/NMS the Company will have the opportunity to secure its own group of market makers and, in doing so, expand the capital base available for trading in its Common Stock; and

(3) The Company also believes that firms making a market in the Company's Common Stock also will be inclined to issue research reports concerning the Company, thereby increasing the number of firms providing institutional research and advisory reports.

Any interested person may, on or before October 16, 1991, submit by letter to the Secretary of the Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91–23414 Filed 9–27–91; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: September 24, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0022
Form Number: IRS Form 712
Type of Review: Extension
Title: Life Insurance Statement
Description: Form 712 is used to establish the value of life insurance policies for estate and gift tax purposes. The tax is based on the value of these policies. The form is completed by life insurance companies.
Respondents: Business or other for-profit
Estimated Number of Respondents/Recordkeepers: 55,000
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—18 hours, 25 minutes
Preparing the form—18 minutes
Frequency of Response: On occasion
Estimated Total Reporting/Recordkeeping Burden: 1,029,050 hours

OMB Number: 1545–0098
Form Number: IRS Form 1045
Type of Review: Extension
Description: Form 1045 is used by individuals, estates, and trusts to apply for a quick refund of taxes due to carryback of a net operating loss, unused general business credit, or claim of right adjustment under section 1341(b). The information obtained is used to determine the validity of the application.
Respondents: Individuals or households, Farms, Businesses or other for-profit, Small businesses or organizations
Estimated Number of Respondents/Recordkeepers: 65,220
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—26 minutes
Learning about the law or the form—29 minutes
Preparing the form—5 minutes, 59 minutes
Copying, assembling, and sending the form to IRS—56 minutes
Frequency of Response: On occasion
Estimated Total Reporting/Recordkeeping Burden: 511,325 hours
OMB Number: 1545–0130

Form Number: IRS Form 1120S, Schedule D and Schedule K–1
Type of Review: Revision
Title: U.S. Income Tax Return for an S Corporation (1120S), Capital Gains and Losses and Built-In Gains (Schedule D), and Shareholder's Share of Income, Credits, Deductions, etc. (Schedule K–1)
Description: Form 1120S, Schedule D (Form 1120S), and Schedule K–1 (Form 1120S) are used by an S corporation to figure its tax liability, and income and other tax-related information to pass through its shareholders. Schedule K–1 is used to report to shareholders their share of the corporation's income, deductions, credits, etc. IRS uses the information to determine the correct tax for the S corporation and its shareholders.
Respondents: Farms, Businesses or other for-profit, Small businesses or organizations
Estimated Number of Respondents/Recordkeepers: 1,389,600
Estimated Burden Hours Per Respondent/Recordkeeper:

	Recordkeeping	Learning about the or the form	Preparing the form	Copying, assembling and sending the form to the IRS
Form 1120S	62 hours, 40 minutes.	18 hours, 38 minutes.	34 hours, 26 minutes.	4 hours, 1 minute.
Schedule D (Form 1120S)	7 hours, 53 minutes.	4 hours, 31 minutes.	9 hours, 31 minutes.	1 hour, 20 minutes.
Schedule K–1 (Form 1120S)	13 hours, 52 minutes.	9 hours, 3 minutes.	14 hours, 6 minutes.	1 hour, 4 minutes.

Frequency of Response: Annually.
Estimated Total Reporting/Recordkeeping Burden: 295, 405, 500 hours.
OMB Number: 1545–0140.
Form Number: IRS Forms 2210 and 2210F.
Type of Review: Revision.
Title: Underpayment of Estimated Tax by Individuals and Fiduciaries (Short Method and Regular Method) (2210); and Underpayment of Estimated Tax by Farmers and Fisherman (2210F).
Description: Internal Revenue Code section 6654 imposes a penalty for failure to pay estimated tax. This form is used by taxpayers to determine whether they are subject to the penalty and to compute the penalty if it applies. The Service uses this information to determine whether the taxpayer is subject to the penalty, and to verify the penalty amount.
Respondents: Annually.
Estimated Number of Respondents/Recordkeepers: 900,000.
Estimated Burden Hours Per Respondent/Recordkeeper:

	Short method	Regular method
Recordkeeping	7 min.	13 min.
Learning about the law or the form.	5 min.	34 min.
Preparing the form	29 min.	1 hr., 49 min.
Coping, assembling, and sending the form to IRS.	20 min.	35 min.

Frequency of Response: Annually.
Estimated Total Reporting/Recordkeeping Burden: 2,105,000 hours.
Clearance Officer: Garrick Sheet (202) 535–4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 91–23453 Filed 9–27–91; 8:45 am]

BILLING CODE 4830–01–M

Public Information Collection Requirements Submitted to OMB for Review

Date: September 24, 1991.

The Department of Treasury has made revisions and resubmitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0687.
Form Number: IRS Form 990–T.
Type of Review: Resubmission.
Title: Exempt Organization Business Income Tax Return.
Description: Form 990–T is needed to compute the section 511 tax on unrelated business income of a charitable organization. IRS uses the information to enforce the tax.
Respondents: Non-profit institutions.
Estimated Number of Respondents/Recordkeepers: 28,000.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping: 58 hours, 50 minutes.
Learning about the law or the form: 20 hours, 20 minutes.
Preparing the form: 32 hours, 26 minutes.
Copying, assembling, and sending the form to IRS: 2 hours, 57 minutes.
Frequency of Response: Annually.
Estimated Total Reporting/Recordkeeping Burden: 3,207,680 hours.
Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 91–23454 Filed 9–27–91; 8:45 am]

BILLING CODE 4830–01–M

Office of the Comptroller of the Currency

[DELEGATION ORDER 30; Docket No. 91–11]

Order of Succession to Act as Comptroller

By virtue of the authority contained in 12 U.S.C. 4 and 4a, it is ordered as follows:

A. During a vacancy in the Office or during the absence or disability of the Comptroller, the following officers shall possess the power and perform the duties attached by law to the Office of

the Comptroller of the Currency in the order of succession enumerated:

(1) Senior Deputy Comptroller for Bank Supervision Operations,

(2) Senior Deputy Comptroller for Bank Supervision Policy,

(3) Senior Deputy Comptroller for Administration,

(4) Senior Deputy Comptroller for Legislative and Public Affairs,

(5) Senior Deputy Comptroller for Corporate Policy and Economic Analysis,

(6) Chief Counsel,

(7) Senior Advisor to the Comptroller.

B. In the event of an enemy attack on the continental United States, all Deputy Comptrollers for the Districts, including any acting Deputy Comptrollers for the Districts, are authorized in their respective districts to perform any function of the Comptroller of the Currency, whether or not otherwise delegated, which is essential to carry out responsibilities otherwise assigned to them. The respective officers will be notified when they are to cease exercising the authority delegated in this paragraph.

C. Delegation Order No. 29 is hereby repealed.

Dated: September 23, 1991.

Robert L. Clarke,

Comptroller of the Currency.

[FR Doc. 91-23459 Filed 9-27-91; 8:45 am]

BILLING CODE 4810-33-M

Office of Thrift Supervision

Abraham Lincoln Federal Savings Association; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Abraham Lincoln Federal Savings Association, Dresher, Pennsylvania, on September 19, 1991.

Dated: September 24, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-23397 Filed 9-27-91; 8:45 am]

BILLING CODE 6720-01-M

Abraham Lincoln Federal Savings Bank; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(A) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Abraham Lincoln Federal Savings Bank, Dresher, Pennsylvania (OTS No. 2564), on September 19, 1991.

Dated: September 24, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-23396 Filed 9-27-91; 8:45 am]

BILLING CODE 6720-01-M

Alexander Hamilton Federal Savings and Loan Association; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Alexander Hamilton Federal Savings and Loan Association, Paterson, New Jersey ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on September 13, 1991.

Dated: September 24, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-23401 Filed 9-27-91; 8:45 am]

BILLING CODE 6720-01-M

American Pioneer Federal Savings Bank; Notice of Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for American Pioneer Federal Savings Bank, Daytona Beach, Florida ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on September 20, 1991.

Dated: September 24, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-23393 Filed 9-27-91; 8:45 am]

BILLING CODE 6720-01-M

AmeriFederal Savings Bank, FSB; Notice of Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for AmeriFederal Savings Bank, FSB, Lawrenceville, New Jersey ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on September 20, 1991.

Dated: September 24, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-23394 Filed 9-27-91; 8:45 am]

BILLING CODE 6720-01-M

BancPlus Federal Savings Association; Replacement of Conservator with a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of Section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for BancPlus Federal Savings Association, Pasadena, Texas ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on September 19, 1991.

Dated: September 24, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-23400 Filed 9-27-91; 8:45 am]

BILLING CODE 6720-01-M

Center Savings and Loan Association, F.A.; Notice of Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of Section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Center Savings and Loan Association, F.A., Clifton, New Jersey ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on September 20, 1991.

Dated: September 24, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-23391 Filed 9-27-91; 8:45 am]

BILLING CODE 6720-01-M

First Federal Savings Association; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for First Federal Savings Association, Winnfield, Louisiana ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on September 5, 1991.

Dated: September 24, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91–23399 Filed 9–27–91; 8:45 am]

BILLING CODE 6720–01–M

Southeastern Federal Savings Bank; Notice of Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Southeastern Federal Savings Bank, Charlotte, North Carolina ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on September 20, 1991.

Dated: September 24, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91–23392 Filed 9–27–91; 8:45 am]

BILLING CODE 6720–01–M

Standard Federal Savings Association; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Standard Federal Savings Association, Houston, Texas ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on August 23, 1991.

Dated: September 24, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91–23398 Filed 9–27–91; 8:45 am]

BILLING CODE 6720–01–M

Yorkville Federal Savings and Loan Association; Notice of Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owner's Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Yorkville Federal Savings and Loan Association, Bronx, New York ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on September 20, 1991.

Dated: September 24, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91–23395 Filed 9–27–91; 8:45 am]

BILLING CODE 6720–01–M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit "Chiefly Feasts: The Enduring Kwakiutl Potlatch" (see list [1]), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lender. I also determine that the temporary exhibition or display of the listed exhibit objects at the American Museum of Natural History, New York, New York, beginning on or about October 28, 1991, to on or about February 23, 1992, the California Academy of Sciences, San Francisco, California, beginning on or about January 27, 1993, to on or about July 18, 1993, the National Museum of Natural History, Smithsonian Institution, Washington, DC, beginning on or about September 15, 1993, to on or about March 6, 1994, and at the Seattle Art Museum, Seattle, Washington, beginning on or about May 4, 1994, to on or about October 23, 1994, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register.**

Dated: September 25, 1991.

Alberto J. Mora,

General Counsel.

[FR Doc. 91–23500 Filed 9–27–91; 8:45 am]

BILLING CODE 8230–01–M

[1] A copy of this list may be obtained by contacting Ms. Lorie J. Nierenberg of the Office of the General Counsel of USIA. The telephone number is 202/619–6975, and the address is U.S. Information Agency, 301 Fourth Street, SW., room 700, Washington, DC 20547.

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit "Stuart Davis, American Painter" (see list [1]), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lender. I also determine that the temporary exhibition or display of the listed exhibit objects at the Metropolitan Museum of Art, New York, New York, beginning on or about November 23, 1991, to on or about February 16, 1992, and at the San Francisco Museum of Modern Art, San Francisco, California, beginning on or about May 26, 1992, to on or about June 7, 1992, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register.**

Dated: September 25, 1991.

[FR Doc. 91–23499 Filed 9–27–91; 8:45 am]

BILLING CODE 8230–01–M

[1] A copy of this list may be obtained by contacting Ms. Lorie J. Nierenberg of the Office of the General Counsel of USIA. The telephone number is 202/619–6975, and the address is U.S. Information Agency, 301 Fourth Street, SW, room 700, Washington, DC 20547.

Sunshine Act Meetings

Federal Register
Vol. 56, No. 189
Monday, September 30, 1991

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).

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Thursday, October 3, 1991.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: September 26, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91–23635 Filed 9–26–91; 1:57 pm]

BILLING CODE 6210–01–M

Corrections

Federal Register
Vol. 56, No. 189
Monday, September 30, 1991

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 COMMERCE

International Trade Administration

National Oceanic and Atmospheric Administration; Decision on Application for Duty-Free Entry of Scientific Instrument

Correction

In notice document 91-22494 appearing on page 47188, in the issue of Wednesday, September 18, 1991, in the second column, the heading was incorrect and should read as shown above.

BILLING CODE 1505-01-D

DEPARTMEMT OF COMMERCE

International Trade Administration

[A-588-015]

Television Receivers, Monochrome and Color from Japan; Amendment to Final Results of Antidumping Duty Administrative Reviews

Correction

In notice document 91-16912 appearing on page 32403 in the issue of Tuesday, July 16, 1991, in the first column, under the table, in the file line at the end of the document, "FR Doc. 91-16910" should read "FR Doc. 91-16912".

BILLING CODE 1505-01-D

DEPARTMENT OF DEFENSE

48 CFR Part 233

Department of Defense, Federal Acquisition Regulation Supplement; GAO Protest Procedures

Correction

In rule document 91-21173 beginning on page 45832 in the issue of Friday, September 6,1991, make the following correction:

233.104 [Corrected]

On page 45832, in the third column, in 233.104(a)(3)(i), in the 6th line, after"agency" insert "shall".

BILLING CODE 1505-01-D

DEPARTMENT OF DEFENSE

48 CFR Part 252

Federal Acquisition Regulation Supplement; Uncompensated Overtime

Correction

In rule document 91-21174 beginning on page 43986 in the issue of Thursday, September 5, 1991, make the following correction:

252.237.7001 [Corrected]

On page 43987, in the second column, in 252.237.7001, in the clause, paragraph "(3) Definitions." should read "(a) Definitions.".

BILLING CODE 1505-01-D

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter 1

[CC Docket No. 91-115; DA No. 91-756]

Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards

Correction

In proposed rule document 91-15623 beginning on page 30373, in the issue of Tuesday, July 2, 1991, make the following correction:

On page 30374, in the first column, in the file line at the end of the document, "FR Doc. 91-15632" should read "FR Doc. 91-15623".

BILLING CODE 1505-01-D

federal register

Monday
September 30, 1991

Part II

Department of the Treasury

Internal Revenue Service

26 CFR Part 1, et al.

Real Estate Mortgage Investment Conduits; Rule, Proposed Rules and Hearings

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 5c, and 602

[T.D. 8366]

RIN 1545-AN52

Real Estate Mortgage Investment Conduits; Reporting Requirements and Other Administrative Matters

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary and final regulations.

SUMMARY: This document contains temporary and final regulations relating to real estate mortgage investment conduits (REMICs). The relevant provisions in the Internal Revenue Code were added or amended by the Tax Reform Act of 1986 and by the Technical and Miscellaneous Revenue Act of 1988. These regulations prescribe the manner in which an entity elects status as a REMIC for Federal income tax purposes and the procedures to be followed when filing a Federal income tax return as a REMIC. The regulations also require REMICs and certain other issuers to file information returns with the Internal Revenue Service and to provide to holders of REMIC interests or certain other collateralized debt instruments notice of income and certain allocable expenses attributable to their interests.

In addition, the temporary regulations set forth in this document serve as the text of the proposed regulations cross-referenced in the notice of proposed rulemaking elsewhere in this issue of the Federal Register.

EFFECTIVE DATE: These regulations are effective after December 31, 1986, and are applicable after that date except as follows:

Sections	Applicability dates
1.67-3T(f)(4)(ii)	Calendar quarters and calendar year after 1991
1.6049-4(b)(2)	
1.6049-7(e)(2)(xi)	
1.67-3T(f) except for (f)(4)(ii).	After September 7, 1989
1.6049-7(e)(2)(x)	Calendar years after 1989
1.6049-7(f)(2)(i)(G) and (f)(2)(ii)(K).	
1.860F-4(e)(1)(ii) (A) and (B).	Calendar quarters and calendar years after 1988
1.6049-7(c) (6) through (15).	
1.6049-7(e)(1), (2)(i) through (ix), (3), (4), and (5).	
1.6049-7(f)(3) (i) and (ii).	
1.6049-7(f)(5)(i) and (f)(7).	
1.6049-7(f)(2)(ii) (E), (F), and (I).	Calendar quarters and calendar years after 1987
1.860F-4(e)(1)(ii)(D)	Calendar quarters in and calendar years 1988 and 1989
1.6049-7(f)(3)(iii)	
1.860F-4(e)(1)(ii)(C)	Calendar quarters in and calendar years 1987
1.860F-4(c)(1)	For REMICs with a startup day on or after November 10, 1988
1.6049-7(g)	For debt instruments issued after April 8, 1988

FOR FURTHER INFORMATION CONTACT: James W. C. Canup, 202-566-6624 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in the final regulations have been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number 1545-1018. The temporary regulation is being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in the temporary regulations has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget (OMB) under control number 1545-1018.

The estimated total annual reporting and/or recordkeeping burden for the requirements contained in §§ 1.67-3T(f)(1), (2), (3), (4)(i), (5), and (6), 1.860D-1(d), 1.860F-4, 1.6049-4(b)(2), 1.6049-7(b), 1.6049-7 (f)(1) through (f)(6) of this regulation is reflected on Schedule Q and Forms 1066, 1099-INT, 1099-OID, 8281, and 8811. The estimated annual burden per respondent/recordkeeper for § 1.67-3T(f)(4)(ii) varies from 0.1 hours to 1.0 hours, depending on individual circumstances, with an estimated average of 0.3 hours. The estimated annual burden per respondent/recordkeeper for § 1.6049-7(e) varies from 0.1 hours to 12.0 hours, depending on individual circumstances, with an estimated average of 1.2 hours. The estimated annual burden per respondent/recordkeeper for 1.6049-7(f)(7) varies from 0.1 hours to 20.0 hours, depending on individual circumstances, with an estimated average of 5 hours.

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/recordkeepers may require more or less time, depending on their particular circumstances.

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

Issuance of Proposed Regulation

The temporary rules contained in this document are also being issued as proposed regulations by the notice of proposed rulemaking (FI-61-91) on this subject elsewhere in this issue of the **Federal Register**. Pursuant to section 7805(f) of the Internal Revenue Code, a copy of the temporary rules are being sent to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Background

Temporary regulations (T.D. 8259) and a notice of proposed rulemaking (FI-27-89) under sections 67, 860D, 860F, and 6049 of the Internal Revenue Code of 1986 (Code), relating to REMICs were published in the **Federal Register** on September 7, 1989, (54 FR 37098 and 37125, respectively). Section 671 of the Tax Reform Act of 1986 (the 1986 Act) added to the Code new sections 860A through 860G to provide rules relating to real estate mortgage investment conduits. Section 674 of the 1986 Act amended section 6049 to impose certain information reporting requirements with respect to REMIC interests and certain other debt instruments. Section 1006(t) of the Technical and Miscellaneous Revenue Act of 1988 (TAMRA) amended certain provisions in sections 860A through 860G and section 6049.

In general, a REMIC is a fixed pool of mortgages in which multiple classes of interests are held by investors and which elects to be taxed as a REMIC. The regulations under section 860D prescribe the manner in which an entity elects status as a REMIC. The regulations under section 860F govern the filing of the REMIC's income tax return and, together with the regulations under section 6049, require notice of income and other information to be provided to REMIC investors and the Internal Revenue Service.

Written comments were received from the public on the proposed regulations.

In addition, on March 14, 1990, the Internal Revenue Service held a public hearing concerning the regulations. After consideration of the comments received and the statements made at the public hearing, the proposed regulations are adopted as revised by this Treasury decision.

Explanation of Provisions

REMIC Income Tax Return and Election

Section 1.860F–4(b) generally requires a REMIC to file an income tax return annually with the Internal Revenue Service. The Service has developed Form 1066, U.S. Real Estate Mortgage Investment Conduit Income Tax Return, for this purpose. As required by section 860F(e), the return must include the amount of the daily accruals determined under section 860E(c). The due date and any extensions for filing the REMIC's annual return are determined as if the REMIC were a partnership that uses the calendar year. Section 1.860F–4(c)(1) provides that the REMIC return must be signed by a person who is authorized to sign the return of the entity absent the REMIC election.

As provided in § 1.860D–1(d)(1), a qualified entity, as defined in § 1.860D–1(c)(3), elects to be treated as a REMIC by timely filing, for its first taxable year, a Form 1066, U.S. Real Estate Mortgage Investment Conduit Income Tax Return, signed by a person authorized to sign that return under § 1.860F–4(c). The Commissioner may, however, upon a showing of good cause, grant a reasonable extension of time under § 1.9100–1 for electing REMIC status. Once made, the election is irrevocable for that taxable year and all succeeding taxable years.

Notice to Residual Interest Holders

At the close of each calendar quarter, a REMIC is required under § 1.860F–4(e)(1) to provide to each person who held a residual interest in the REMIC during the quarter notice on Schedule Q (Form 1066) of certain information. That information includes (a) the residual holder's share of REMIC taxable income or net loss for the calendar quarter, (b) the amount of the excess inclusion with respect to the holder's residual interest, (c) in the case of certain holders, the allocable investment expenses for the quarter, and (d) for calendar years after 1987, the percentage of the REMIC's assets that are qualifying real property loans under section 593, assets described in section 7701(a)(19), and real estate assets defined in section 856(c)(6)(B). A residual interest holder may rely upon the information provided on Schedule Q concerning the percentage of assets tests in determining the tax treatment of its residual interest under sections 593, 7701(a)(19)(C), and 856. This right of reliance will be explicitly stated in future regulations under those code sections.

Section 1.860F–4(e)(2) requires that Schedule Q be mailed (or otherwise delivered) to each holder of a residual interest during a calendar quarter not later than the last day of the month following the close of the calendar quarter. Further, § I.860F–4(e)(4) provides that, for each person who was a residual interest holder at any time during a calendar year, the REMIC must attach to its income tax return for that year a copy of Schedule Q for each quarter in which that person was a residual interest holder. Quarterly notice to the Internal Revenue Service is not required.

Reporting to the Internal Revenue Service

Section 1.6049–7(b)(1) requires every REMIC and issuer of a collateralized debt obligation (as defined in § 1.6049–7(d)(2)) to file Form 8811, Information Return for Real Estate Mortgage Investment Conduits (REMICs) and Issuers of Collateralized Debt Obligations, with the Internal Revenue Service on or before the later of July 31, 1989, or the 30th day after the startup day (as defined in section 860G(a)(9)) of the REMIC or the issue date (as defined in section 1275(a)(2)) of a collateralized debt obligation. Further, a new Form 8811 must be filed on or before the 30th day after any change in the information previously provided on Form 8811.

The Internal Revenue Service prints in Publication 938 the information on Form 8811 concerning the representative to be contacted by persons specified in § 1.6049–7(e)(4) and the manner for requesting the tax information specified in § 1.6049–7(e)(2) from the representative.

Reporting to Certain Brokers, Middlemen, Corporations, Non-Calendar Year Taxpayers, and Other Persons Specified in § 1.6049–7(e)(4)

Pursuant to § 1.6049–7(e)(3), a REMIC or issuer of a collateralized debt obligation that receives a request from a person specified in § 1.6049–7(e)(4) must provide the tax information specified in § 1.6049–7(e)(2) to the person requesting the information. The tax information may be provided by telephone, by written statement, by causing it to be published in a publication generally read by persons permitted to make the request, or by any other method agreed to by the parties, on or before the later of the 30th day after the close of the calendar quarter for which the information was requested, or the day that is two weeks after the receipt of the request.

Reporting to Regular Interest Holders

Section 6049 of the Code requires that certain returns of information be made regarding payments of interest. Under section 6049(d)(7) and § 1.6049–7(a), the term "interest" includes amounts includible in the gross income of any holder of a REMIC regular interest or a collateralized debt obligation.

As required by § 1.6049–7(b)(2), an information return must be made on a Form 1099 with respect to any payment of interest (as defined in § 1.6049–7(a)) aggregating $10 or more. For calendar years after 1988, this return must be made by a REMIC or an issuer of a collateralized debt obligation and by any broker or middleman who holds as a nominee any REMIC regular interest or any collateralized debt obligation for the actual owner. Information returns are not required, however, with respect to amounts includible as interest by certain holders specified in § 1.6049–7(c).

The information returns required under § 1.6049–7(b)(2) are to be filed annually in the manner prescribed in paragraph (b)(2)(iv) of that section. Generally, § 1.6049–7(f) requires that the information provided to the Service and, if applicable, an additional statement containing information regarding market discount and original issue discount be furnished to each person in whose income amounts are includible as interest in the time and manner specified in paragraphs (f) (5) and (6) of that section respectively. Under § 1.6049–7(f)(3), certain information regarding REMIC assets must also be provided to investors.

Nominee Requirement To Furnish Information to Corporations, Non-Calendar Year Taxpayers, and Other Persons Specified in § 1.6049–7(c) (9) through (15)

Section 1.6049–7(f)(7)(i) requires brokers and middlemen holding as nominees REMIC regular interests or collateralized debt obligations to provide in writing or by telephone the information specified in § 1.6049–7(e)(2). The information must be provided to corporations, non-calendar year taxpayers, and other persons specified in § 1.6049–7(c) (9) through (15) in the time prescribed in § 1.6049–7(f)(7)(ii).

Information Required on Debt Instrument

Under § 1.6049–7(g), the issuer of any REMIC regular interest or any collateralized debt obligation is required to set forth certain information on the face of the regular interest or collateralized debt obligation. This requirement is effective, however, only with respect to any regular interest or collateralized debt obligation that is issued after April 8, 1988.

Reporting Original Issue Discount on Debt Instruments Not Subject to Section 1272(a)(6)

Section 1.6049–4 requires information returns to be filed with respect to all debt instruments issued with original issue discount. With respect to instruments other than REMIC regular interests and other collateralized debt obligations, § 1.6049–4(b)(2) permits brokers to send Forms 1099–OID only to those persons who were holders of record on the semiannual record date, if any, or on June 30 and December 31. The amendments to § 1.6049–4(b)(2), which were proposed in 1989 and are finalized in this document, require brokers to provide a Form 1099–OID to each person who was a holder of record at any time during the calendar year, even if the person was not the holder of record on June 30 or December 31 of that year, and to report the original issue discount for the period that the person held the debt instrument.

Notice to Pass-Through Interest Holders Who Hold Regular Interests in Single-Class REMICs

Section 1.67–3T(f) provides that a single-class REMIC (generally, one that would be classified as a trust had it not elected REMIC status) must furnish quarterly information to certain of its regular interest holders showing each such interest holder's allocable share of the REMIC's investment expenses.

Exclusion of Interest on Certain All-Savers Certificates

Section 5c.128–1 only applied to All-Savers Certificates issued after August 30, 1981, and before January 1, 1983. That section no longer applies to any taxpayers and, consequently, is being withdrawn.

Summary of Amendments

Commentators have requested that the REMIC or issuer of a collateralized debt obligation be permitted to require that requests for information from brokers and other persons entitled to request the information be in writing. The previous regulations provided that requests could be made in writing or by telephone. The regulations now provide that the REMIC or issuer need only specify on Form 8811 an address (not a telephone number) if all requests must be made in writing. If Publication 938 contains only an address, requests must be made in writing.

Commentators have also requested that the tax information from the REMIC or issuer specify the following: (1) The daily portion of original issue discount per $1,000 of original principal amount and no unit other than $1,000, (2) whether the information being reported is with respect to a REMIC regular interest or a collateralized debt obligation, and (3) the section 67 information with respect to a single class REMIC. The regulations have been amended to incorporate the changes suggested by these comments. The requirement for information concerning the market discount fraction has also been amended to clarify the meaning of the term "remaining original issue discount at the beginning of the accrual period." That term means the original issue discount allocable to that accrual period, plus the remaining original issue discount as of the end of that accrual period. Further, temporary regulations permit the use of de minimis original issue discount in computing the market discount fraction. See H.R. Conf. Rep. No. 841, 99th Cong., 2nd Sess. II–842 (1986), for the application of the market discount rules to amortizing amortizable bond premium within the meaning of section 171.

In addition, commentators requested that the 30-day time period for REMICs and issuers of collateralized debt obligations to respond to requests for tax information and for REMICs to furnish Schedule Qs be extended. This issue is not addressed in these temporary and final regulations. In order to allow an opportunity for comment, this issue is addressed in a notice of proposed rulemaking (FI–38–91) elsewhere in this issue of the **Federal Register**.

Commentators have requested other amendments that have not been adopted. Some requests dealt with subject matter outside the scope of these temporary and final regulations, while others related to procedural instructions that are more detailed than those customarily provided in regulations.

Other editorial changes, however, have been made to clarify the temporary and final regulations. Further, the effective date for the requirement in § 1.6049–4(b) that original issue discount information must be provided to each holder for the period that person held the debt instrument has been delayed. It is effective for calendar years beginning after December 31, 1991. Finally, the quarterly information required to be furnished to regular interest holders pursuant to § 1.67–3T(f)(2)(ii) may be separately stated on the statement containing Form 1099 information instead of in a separate statement provided in a separate mailing.

Need for Temporary Regulations

The provisions contained in this Treasury Decision are needed immediately to clarify guidance already provided to the public with respect to single-class REMICs. Therefore, it is found impracticable and contrary to the public interest to issue this Treasury Decision with prior notice under section 553(b) of title 5 of the United States Code.

Special Analyses

These rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. Although this Treasury decision was preceded by a notice of proposed rulemaking that solicited public comments, the notice was not required by 5 U.S.C. 553 since the regulations proposed in that notice and adopted by this Treasury decision are interpretative. Therefore, a final Regulatory Flexibility Analysis is not required by the Regulatory Flexibility Act (5 U.S.C. chapter 6). Pursuant to section 7805(f) of the Internal Revenue Code, the proposed regulations were sent to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal authors of these regulations are James W.C. Canup and Laura Ann M. Lauritzen, Office of the Assistant Chief Counsel (Financial Institutions and Products), Internal Revenue Service. However, personnel from other offices of the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR 1.61–1 Through 1.67–4T

Income taxes, Reporting and recordkeeping requirements.

26 CFR 1.860D–1T Through 1.860F–4T

Income taxes, Investments, Mortgages, Reporting and recordkeeping requirements.

26 CFR 1.6031–1 Through 1.6060–1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 5c

Economic Recovery Tax Act of 1981, Income taxes.

26 CFR Part 602

Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, title 26, parts 1, 5c, and 602, of the Code of Federal Regulations, is amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority for part 1 is amended by removing the authorities for § 1.860F–4T and adding the following citations:

Authority: Sec. 7805, 68A Stat. 917; 26 U.S.C. 7805 * * * § 1.860D–1 also issued under 26 U.S.C. 860G(e) * * * § 1.860F–4 also issued under 26 U.S.C. 860G(e) * * * § 1.6049–7 also issued under 26 U.S.C. 860G(e), 26 U.S.C. 1275(c), and 26 U.S.C. 6049(d)(7)(D). * * *

Par. 2. In § 1.67–3T, paragraph (f) is revised to read as follows:

§ 1.67–3T Allocation of expenses by real estate mortgage investment conduits (temporary).

* * * * *

(f) *Notice to pass-through interest holders*—(1) *Information required.* A REMIC must provide to each pass-through interest holder to which an allocation of allocable investment expense is required to be made under paragraph (a)(1) of this section notice of the following—

(i) If, pursuant to paragraph (f)(2) (i) or (ii) of this section, notice is provided for a calendar quarter, the aggregate amount of expenses paid or accrued during the calendar quarter for which the REMIC is allowed a deduction under section 212;

(ii) If, pursuant to paragraph (f)(2)(ii) of this section, notice is provided to a regular interest holder for a calendar year, the aggregate amount of expenses paid or accrued during each calendar quarter that the regular interest holder held the regular interest in the calendar year and for which the REMIC is allowed a deduction under section 212; and

(iii) The proportionate share of these expenses allocated to that pass-through interest holder, as determined under paragraph (c) of this section.

(2) *Statement to be furnished*—(i) *To residual interest holder.* For each calendar quarter, a REMIC shall provide to each pass-through interest holder who holds a residual interest during the calendar quarter the notice required under paragraph (f)(1) of this section on Schedule Q (Form 1066), as required in § 1.860F–4(e).

(ii) *To regular interest holder*—(A) *In general.* For each calendar year, a single-class REMIC (as described in paragraph (a)(2)(ii)(B) of this section) must provide to each pass-through interest holder who held a regular interest during the calendar year the notice required under paragraph (f)(1) of this section. Quarterly reporting is not required. The information required to be included in the notice may be separately stated on the statement described in § 1.6049–7(f) instead of on a separate statement provided in a separate mailing. See § 1.6049–7(f)(4). The separate statement provided in a separate mailing must be furnished to each pass-through interest holder no later than the last day of the month following the close of the calendar year.

(B) *Special rule for 1987.* The information required under paragraph (f)(2)(ii)(A) of this section for any calendar quarter of 1987 shall be mailed (or otherwise delivered) to each pass-through interest holder who holds a regular interest during that calendar quarter no later than March 28, 1988.

(3) *Returns to the Internal Revenue Service*—(i) *With respect to residual interest holders.* Any REMIC required under paragraphs (f)(1) and (2)(i) of this section to furnish information to any pass-through interest holder who holds a residual interest shall also furnish such information to the Internal Revenue Service as required in § 1.860F–4(e)(4).

(ii) *With respect to regular interest holders.* A single-class REMIC (as described in paragraph (a)(2)(ii)(B) of this section) shall make an information return on Form 1099 for each calendar year beginning after December 31, 1987, with respect to each pass-through interest holder who holds a regular interest to which an allocation of allocable investment expenses is required to be made pursuant to paragraphs (a)(1) and (2)(ii) of this section. The preceding sentence applies with respect to a holder for a calendar year only if the REMIC is required to make an information return to the Internal Revenue Service with respect to that holder for that year pursuant to section 6049 and § 1.6049–7(b)(2)(i) (or would be required to make an information return but for the $10 threshold described in section 6049(a)(1) and § 1.6049–7(b)(2)(i)). The REMIC shall state on the information return—

(A) The sum of—

(*1*) The aggregate amounts includible in gross income as interest (as defined in § 1.6049–7(a)(1) (i) and (ii)), for the calendar year, and

(*2*) The sum of the amount of allocable investment expenses required to be allocated to the pass-through interest holder for each calendar quarter during the calendar year pursuant to paragraph (a) of this section, and

(B) Any other information specified by the form or its instructions.

(4) *Interest held by nominees and other specified persons*—(i) *Pass-through interest holder's interest held by a nominee.* If a pass-through interest holder's interest in a REMIC is held in the name of a nominee, the REMIC may make the information return described in paragraphs (f)(3) (i) and (ii) of this section with respect to the nominee in lieu of the pass-through interest holder and may provide the written statement described in paragraphs (f)(2) (i) and (ii) of this section to that nominee in lieu of the pass-through interest holder.

(ii) *Regular interests in a single-class REMIC held by certain persons.* For calendar quarters and calendar years after December 31, 1991, if a person specified in § 1.6049–7(e)(4) holds a regular interest in a single-class REMIC (as described in paragraph (a)(2)(ii)(B) of this section), then the single-class REMIC must provide the information described in paragraphs (f)(1) and (f)(3)(ii) (A) and (B) of this section to that person with the information specified in § 1.6049–7(e)(2) as required in § 1.6049–7(e).

(5) *Nominee reporting*—(i) *In general.* In any case in which a REMIC provides information pursuant to paragraph (f)(4) of this section to a nominee of a pass-through interest holder for a calendar quarter or, as provided in paragraph (f)(2)(ii) of this section, for a calendar year—

(A) The nominee shall furnish each pass-through interest holder with a written statement described in paragraph (f)(2) (i) or (ii) of this section, whichever is applicable, showing the information described in paragraph (f)(1) of this section, and

(B) If—

(*1*) The nominee is a nominee for a pass-through interest holder who holds a regular interest in a single-class REMIC (as described in paragraph (a)(2)(ii)(B) of this section), and

(*2*) The nominee is required to make an information return pursuant to section 6049 and § 1.6049–7(b)(2)(i) and (b)(2)(ii)(B) (or would be required to make an information return but for the $10 threshold described in section 6049(a)(2) and § 1.6049–7(b)(2)(i)) with respect to the pass-through interest holder,

the nominee shall make an information return on Form 1099 for each calendar year beginning after December 31, 1987, with respect to the pass-through interest holder and state on this information return the information described in paragraph (f)(3)(ii) (A) and (B) of this section.

(ii) *Time for furnishing statement.* The statement required by paragraph (f)(5)(i)(A) of this section to be furnished by a nominee to a pass-through interest holder for a calendar quarter or calendar year shall be furnished to this holder no later than 30 days after receiving the written statement described in paragraph (f)(2) (i) or (ii) of this section from the REMIC. If, however, pursuant to paragraph (f)(2)(ii) of this section, the information is separately stated on the statement described in § 1.6049–7(f), then the information must be furnished to the pass-through interest holder in the time specified in § 1.6049–7(f)(5).

(6) *Special rules*—(i) *Time and place for furnishing returns.* The returns required by paragraphs (f)(3)(ii) and (f)(5)(i)(B) of this section for any calendar year shall be filed at the time and place that a return required under section 6049 and § 1.6049–7(b)(2) is required to be filed. See § 1.6049–4(g) and § 1.6049–7(b)(2)(iv).

(ii) *Duplicative returns not required.* The requirements of paragraphs (f)(3)(ii) and (f)(5)(i)(B) of this section for the making of an information return shall be met by the timely filing of an information return pursuant to section 6049 and § 1.6049–7(b)(2) that contains the information required by paragraph (f)(3)(ii) of this section.

§§ 1.860D–1T and 1.860F–4T [Removed]

Par. 3. Sections 1.860D–1T and 1.860F–4T are removed.

Par. 4. Sections 1.860D–1 and 1.860F–4 are added to read as follows:

§ 1.860D–1 Definition of a REMIC.

(a) *In general.* (Reserved)

(b) *Specific requirements.* (Reserved)

(c) *Segregated pool of assets*—(1) *Formation of REMIC.* A REMIC may be formed as a segregated pool of assets rather than as a separate entity. To constitute a REMIC, the assets identified as part of the segregated pool must be treated for all Federal income tax purposes as assets of the REMIC and interests in the REMIC must be based solely on assets of the REMIC.

(2) *Identification of assets.* (Reserved)

(3) *Qualified entity defined.* For purposes of this section, the term "qualified entity" includes an entity or a segregated pool of assets within an entity.

(d) *Election to be treated as a real estate mortgage investment conduit*—(1) *In general.* A qualified entity, as defined in paragraph (c)(3) of this section, elects to be treated as a REMIC by timely filing, for the first taxable year of its existence, a Form 1066, U.S. Real Estate Mortgage Investment Conduit Income Tax Return, signed by a person authorized to sign that return under § 1.860F–4(c). See § 1.9100–1 for rules regarding extensions of time for making elections. Once made, this election is irrevocable for that taxable year and all succeeding taxable years.

(2) *Information required to be reported in the REMIC's first taxable year.* For the first taxable year of the REMIC's existence, the qualified entity, as defined in paragraph (c)(3) of this section, must provide either on its return or in a separate statement attached to its return—

(i) The REMIC's employer identification number, which must not be the same as the identification number of any other entity,

(ii) Information concerning the terms and conditions of the regular interests and the residual interest of the REMIC, or a copy of the offering circular or prospectus containing such information,

(iii) A description of the prepayment and reinvestment assumptions that are made pursuant to section 1272(a)(6) and the regulations thereunder, including a statement supporting the selection of the prepayment assumption,

(iv) The form of the electing qualified entity under State law or, if an election is being made with respect to a segregated pool of assets within an entity, the form of the entity that holds the segregated pool of assets, and

(v) Any other information required by the form.

(3) *Requirement to keep sufficient records.* A qualified entity, as defined in paragraph (c)(3) of this section, that elects to be a REMIC must keep sufficient records concerning its investments to show that it has complied with the provisions of sections 860A through 860G and the regulations thereunder during each taxable year.

§ 1.860F–4 REMIC reporting requirements and other administrative rules.

(a) *In general.* Except as provided in paragraph (c) of this section, for purposes of subtitle F of the Internal Revenue Code, a REMIC is treated as a partnership and any holder of a residual interest in the REMIC is treated as a partner. A REMIC is not subject, however, to the rules of subchapter C of chapter 63 of the Internal Revenue Code, relating to the treatment of partnership items, for a taxable year if there is at no time during the taxable year more than one holder of a residual interest in the REMIC.

(b) *REMIC tax return*—(1) *In general.* To satisfy the requirement under section 6031 to make a return of income for each taxable year, a REMIC must file the return required by paragraph (b)(2) of this section. The due date and any extensions for filing the REMIC's annual return are determined as if the REMIC were a partnership.

(2) *Income tax return.* The REMIC must make a return, as required by section 6011(a), for each taxable year on Form 1066, U.S. Real Estate Mortgage Investment Conduit Income Tax Return. The return must include—

(i) The amount of principal outstanding on each class of regular interests as of the close of the taxable year,

(ii) The amount of the daily accruals determined under section 860E(c), and

(iii) The information specified in § 1.860D–1(d)(2) (i), (iv), and (v).

(c) *Signing of REMIC return*—(1) *In general.* Although a REMIC is generally treated as a partnership for purposes of subtitle F, for purposes of determining who is authorized to sign a REMIC's income tax return for any taxable year, the REMIC is not treated as a partnership and the holders of residual interests in the REMIC are not treated as partners. Rather, the REMIC return must be signed by a person who could sign the return of the entity absent the REMIC election. Thus, the return of a REMIC that is a corporation or trust under applicable State law must be signed by a corporate officer or a trustee, respectively. The return of a REMIC that consists of a segregated pool of assets must be signed by a person who could sign the return of the entity that owns the assets of the REMIC under applicable State law.

(2) *REMIC whose startup day is before November 10, 1988*—(i) *In general.* The income tax return of a REMIC whose startup day is before November 10, 1988, may be signed by any person who held a residual interest during the taxable year to which the return relates, or, as provided in section 6903, by a fiduciary, as defined in section 7701(a)(6), who is acting for the REMIC and who has furnished adequate notice in the manner prescribed in § 301.6903–1(b) of this chapter.

(ii) *Startup day.* For purposes of paragraph (c)(2) of this section, startup day means any day selected by a REMIC that is on or before the first day on which interests in such REMIC are issued.

(iii) *Exception.* A REMIC whose startup day is before November 10, 1988, may elect to have paragraph (c)(1) of this section apply, instead of paragraph (c)(2) of this section, in determining who is authorized to sign the REMIC return. See section 1006(t)(18)(B) of the Technical and Miscellaneous Revenue Act of 1988 (102 Stat. 3426) and § 5h.6(a)(1) of this chapter for the time and manner for making this election.

(d) *Designation of tax matters person.* A REMIC may designate a tax matters person in the same manner in which a partnership may designate a tax matters partner under § 301.6231(a)(7)–1T of this chapter. For purposes of applying that section, all holders of residual interests in the REMIC are treated as general partners.

(e) *Notice to holders of residual interests*—(1) *Information required.* As of the close of each calendar quarter, a REMIC must provide to each person who held a residual interest in the REMIC during that quarter notice on Schedule Q (Form 1066) of information specified in paragraphs (e)(1) (i) and (ii) of this section.

(i) *In general.* Each REMIC must provide to each of its residual interest holders the following information—

(A) That person's share of the taxable income or net loss of the REMIC for the calendar quarter;

(B) The amount of the excess inclusion (as defined in section 860E and the regulations thereunder), if any, with respect to that person's residual interest for the calendar quarter;

(C) If the holder of a residual interest is also a pass-through interest holder (as defined in § 1.67–3T(a)(2)), the allocable investment expenses (as defined in § 1.67–3T(a)(4)) for the calendar quarter, and

(D) Any other information required by Schedule Q (Form 1066).

(ii) *Information with respect to REMIC assets*—(A) *95 percent asset test.* For calendar quarters after 1988, each REMIC must provide to each of its residual interest holders the following information—

(*1*) The percentage of REMIC assets that are qualifying real property loans under section 593,

(*2*) The percentage of REMIC assets that are assets described in section 7701(a)(19), and

(*3*) The percentage of REMIC assets that are real estate assets defined in section 856(c)(6)(B), computed by reference to the average adjusted basis (as defined in section 1011) of the REMIC assets during the calendar quarter (as described in paragraph (e)(1)(iii) of this section). If the percentage of REMIC assets represented by a category is at least 95 percent, then the REMIC need only specify that the percentage for that category was at least 95 percent.

(B) *Additional information required if the 95 percent test not met.* If, for any calendar quarter after 1988, less than 95 percent of the assets of the REMIC are real estate assets defined in section 856(c)(6)(B), then, for that calendar quarter, the REMIC must also provide to any real estate investment trust (REIT) that holds a residual interest the following information—

(*1*) The percentage of REMIC assets described in section 856(c)(5)(A), computed by reference to the average adjusted basis of the REMIC assets during the calendar quarter (as described in paragraph (e)(1)(iii) of this section),

(*2*) The percentage of REMIC gross income (other than gross income from prohibited transactions defined in section 860F(a)(2)) described in section 856(c)(3)(A) through (E), computed as of the close of the calendar quarter, and

(*3*) The percentage of REMIC gross income (other than gross income from prohibited transactions defined in section 860F(a)(2)) described in section 856(c)(3)(F), computed as of the close of the calendar quarter. For purposes of this paragraph (e)(1)(ii)(B)(*3*), the term "foreclosure property" contained in section 856(c)(3)(F) has the meaning specified in section 860G(a)(8).

In determining whether a REIT satisfies the limitations of section 856(c)(2), all REMIC gross income is deemed to be derived from a source specified in section 856(c)(2).

(C) *For calendar quarters in 1987.* For calendar quarters in 1987, the percentages of assets required in paragraphs (e)(1)(ii) (A) and (B) of this section may be computed by reference to the fair market value of the assets of the REMIC as of the close of the calendar quarter (as described in paragraph (e)(1)(iii) of this section), instead of by reference to the average adjusted basis during the calendar quarter.

(D) *For calendar quarters in 1988 and 1989.* For calendar quarters in 1988 and 1989, the percentages of assets required in paragraphs (e)(1)(ii) (A) and (B) of this section may be computed by reference to the average fair market value of the assets of the REMIC during the calendar quarter (as described in paragraph (e)(1)(iii) of this section), instead of by reference to the average adjusted basis of the assets of the REMIC during the calendar quarter.

(iii) *Special provisions.* For purposes of paragraph (e)(1)(ii) of this section, the percentage of REMIC assets represented by a specified category computed by reference to average adjusted basis (or fair market value) of the assets during a calendar quarter is determined by dividing the average adjusted bases (or for calendar quarters before 1990, fair market value) of the assets in the specified category by the average adjusted basis (or, for calendar quarters before 1990, fair market value) of all the assets of the REMIC as of the close of each month, week, or day during that calendar quarter. The monthly, weekly, or daily computation period must be applied uniformly during the calendar quarter to all categories of assets and may not be changed in succeeding calendar quarters without the consent of the Commissioner.

(2) *Quarterly notice required*—(i) *In general.* Schedule Q must be mailed (or otherwise delivered) to each holder of a residual interest during a calendar quarter no later than the last day of the month following the close of the calendar quarter.

(ii) *Special rule for 1987.* Notice to any holder of a REMIC residual interest of the information required in paragraph (e)(1) of this section for any of the four calendar quarters of 1987 must be mailed (or otherwise delivered) to each holder no later than March 28, 1988.

(3) *Nominee reporting*—(i) *In general.* If a REMIC is required under paragraphs (e) (1) and (2) of this section to provide notice to an interest holder who is a nominee of another person with respect to an interest in the REMIC, the nominee must furnish that notice to the person for whom it is a nominee.

(ii) *Time for furnishing statement.* The nominee must furnish the notice required under paragraph (e)(3)(i) of this section to the person for whom it is a nominee no later than 30 days after receiving this information.

(4) *Reports to the Internal Revenue Service.* For each person who was a residual interest holder at any time during a REMIC's taxable year, the REMIC must attach a copy of Schedule Q to its income tax return for that year for each quarter in which that person was a residual interest holder. Quarterly notice to the Internal Revenue Service is not required.

§ 1.6049–4 [Amended]

Par. 5. Section 1.6049–4 is amended as follows:

1. The first sentence of paragraph (b)(2) is removed and two new sentences are added in its place.

2. The second sentence in paragraph (b)(2)(iii) is revised.

3. The concluding text of paragraph (b)(2), is revised.

4. The added and revised provisions read as follows:

§ 1.6049–4 Returns of information as to interest paid and original issue discount includible in gross income after December 31, 1982.

* * * * *

(b) * * *

(2) *Original issue discount.* Except as provided in paragraph (b)(3) of this section, in the case of original issue discount, an information return on Forms 1096 and 1099 shall be made for each calendar year of any holder of an obligation as to which there is original issue discount includible in gross income aggregating $10 or more. For calendar years before 1992, semiannual record date reporting under § 1.6049–1(a)(1)(ii)(*b*)(*1*) may be used, and if it is used, the original issue discount includible in gross income is determined by treating each holder as holding the obligation on every day it was outstanding during the calendar year. * * *

(iii) * * * For calendar years before 1992, semiannual record date reporting under § 1.6049–1(a)(1)(ii)(*b*)(*1*) may be used, and if it is used, the original issue discount includible in gross income is determined by treating each holder as holding the obligation on every day it was outstanding during the calendar year. * * *

* * * * *

Section 1.6049–1(a)(1)(ii)(*b*)(*2*) and, for calendar years before 1992, § 1.6049–1(a)(1)(ii) (*b*)(*1*), and (*c*), apply for purposes of this paragraph.

* * * * *

Par. 6. Section 1.6049–7T is revised to read as follows:

§ 1.6049–7T Market discount fraction reported with other financial information with respect to REMICs and collateralized debt obligations (temporary).

For purposes of § 1.6049–7(f)(2)(i)(G)(*1*) relating to the market discount fraction to be reported with other financial information with respect to REMICs and other collateralized debt obligations, if the REMIC regular interest or the collateralized debt obligation has de minimis original issue discount (as defined in section 1273(a)(3) and any regulations thereunder), then, at the option of the REMIC or the issuer of the collateralized debt obligation, a fraction computed in the manner specified in paragraph (f)(2)(ii)(K) of this section taking into account the de minimis original issue discount may be reported instead of the fraction specified in § 1.6049–7(f)(2)(i)(G)(*1*)(*i*). The REMIC or the issuer of the collateralized debt obligation, however, must be consistent in the method used to compute this fraction.

Par. 7. Section 1.6049–7 is added to read as follows:

§ 1.6049 Returns of information with respect to REMIC regular interests and collateralized debt obligations.

(a) *Definition of interest*—(1) *In general.* For purposes of section 6049(a), for taxable years beginning after December 31, 1986, the term *interest* includes:

(i) Interest actually paid with respect to a collateralized debt obligation (as defined in paragraph (d)(2) of this section),

(ii) Interest accrued with respect to a REMIC regular interest (as defined in section 860G(a)(1)), or

(iii) Original issue discount accrued with respect to a REMIC regular interest or a collateralized debt obligation.

(2) *Interest deemed paid.* For purposes of this section and in determining who must make an information return under section 6049(a), interest as defined in paragraphs (a)(1) (ii) and (iii) of this section is deemed paid when includible in gross income under section 860B (b) or section 1272.

(b) *Information required to be reported to the Internal Revenue Service*—(1) *Requirement of filing Form 8811 by REMICs and other issuers*—(i) *In general.* Except in the case of a REMIC all of whose regular interests are owned by one other REMIC, every REMIC and every issuer of a collateralized debt obligation (as defined in paragraph (d)(2) of this section) must make an information return on Form 8811, Information Return for Real Estate Mortgage Investment Conduits (REMICs) and Issuers of Collateralized Debt Obligations. Form 8811 must be filed in the time and manner prescribed in paragraph (b)(1)(iii) of this section. The submission of Form 8811 to the Internal Revenue Service does not satisfy the election requirement specified in § 1.860D-1T(d) and does not require election of REMIC status.

(ii) *Information required to be reported.* The following information must be reported to the Internal Revenue Service on Form 8811—

(A) The name, address, and employer identification number of the REMIC or the issuer of a collateralized debt obligation (as defined in paragraph (d)(2) of this section);

(B) The name, title, and either the address or the address and telephone number of the official or representative of the REMIC or the issuer of a collateralized debt obligation who will provide to any person specified in paragraph (e)(4) of this section the interest and original issue discount information specified in paragraph (e)(2) of this section;

(C) The startup day (as defined in section 860G(a)(9)) of the REMIC or the issue date (as defined in section 1275(a)(2)) of the collateralized debt obligation;

(D) The Committee on Uniform Security Identification Procedure (CUSIP) number, aocount number, serial number, or other identifying number or information, of each class of REMIC regular interest or collateralized debt obligation;

(E) The name, title, address, and telephone number of the official or representative of the REMIC or the issuer of a collateralized debt obligation whom the Internal Revenue Service may contact, and

(F) Any other information required by Form 8811.

(iii) *Time and manner of filing of information return*—

(A) *Manner of filing.* Form 8811 must be filed with the Internal Revenue Service at the address specified on the form. The information specified in paragraph (b(1)(ii) of this section must be provided on Form 8811 regardless of whether other information returns are filed by use of electronic media.

(B) *Time for filing.* Form 8811 must be filed by each REMIC or issuer of a collateralized debt obligation on or before the later of July 31, 1989, or the 30th day after—

(*1*) the startup day (as defined in section 860G(a)(9)) in the case of a REMIC, or

(*2*) the issue date (as defined in section 1275(a)(2)) in the case of a collateralized debt obligation.

Further, each REMIC or issuer of a collateralized debt obligation must file a new Form 8811 on or before the 30th day after any change in the information previously provided on Form 8811.

(2) *Requirement of reporting by REMICs, issuers, and nominees*—(i) *In general.* Every person described in paragraph (b)(2)(ii) of this section who pays to another person $10 or more of interest (as defined in paragraph (a) of this section) during any calendar year must file an information return on Form 1099, unless the interest is paid to a person specified in paragraph (c) of this section.

(ii) *Person required to make reports.* The persons required to make an information return under section 6049(a) and this section are—

(A) REMICs or issuers of collateralized debt obligations (as defined in paragraph (d)(2) of this section), and

(B) Any broker who holds as a nominee or middleman who holds as a nominee any REMIC regular interest or any collateralized debt obligation.

(iii) *Information to be reported*—(A) *REMIC regular interests and collateralized debt obligations not issued with original issue discount.* An information return on Form 1099 must be made for each holder of a REMIC regular interest or collateralized debt obligation not issued with original issue discount, but only if the holder has been paid interest (as defined in paragraph (a) of this section) of $10 or more for the calendar year. The information return must show—

(*1*) The name, address, and taxpayer identification number of the record holder,

(*2*) The CUSIP number, account number, serial number, or other identifying number or information, of each REMIC regular interest or collateralized debt obligation, with respect to which a return is being made,

(*3*) The aggregate amount of interest paid or deemed paid to the record holder for the period during the calendar year for which the return is made,

(*4*) The name, address, and taxpayer identification number of the person required to file this return, and

(*5*) Any other information required by the form.

(B) *REMIC regular interests and collateralized debt obligations issued with original issue discount.* An information return on Form 1099 must be made for each holder of a REMIC regular interest or a collateralized debt obligation issued with original issue discount, but only if the holder has been paid interest (as defined in paragraph (a) of this section) of $10 or more for the calendar year. The information return must show—

(*1*) The name, address, and taxpayer identification number of the record holder,

(*2*) The CUSIP number, account number, serial number, or other identifying number or information, of each REMIC regular interest or collateralized debt obligation, with respect to which a return is being made,

(*3*) The aggregate amount of original issue discount deemed paid to the record holder for the period during the calendar year for which the return is made,

(*4*) The aggregate amount of interest, other than original issue discount, paid or deemed paid to the record holder for the period during the calendar year for which the return is made,

(*5*) The name, address, and taxpayer identification number of the person required to file this return, and

(*6*) Any other information required by the form.

(C) *Cross-reference.* See § 1.67–3T(f)(3)(ii) for additional information required to be included on an information return on Form 1099 with respect to certain holders of regular interests in REMICs described in § 1.67–3T(a)(2)(ii).

(iv) *Time and place for filing a return with respect to amounts includible as interest.* The returns required under paragraph (b)(2) of this section for any calendar year must be filed after September 30 of that year, but not before the payor's final payment to the payee for the year, and on or before February 28 of the following year. These returns must be filed with the appropriate Internal Revenue Service Center, the address of which is listed in the instructions for Form 1099. For extensions of time for filing returns under this section, see § 1.6081–1. For magnetic media filing requirements, see § 301.6011–2 of this chapter.

(c) *Information returns not required.* An information return is not required under section 6049(a) and this section with respect to payments of interest on a REMIC regular interest or collateralized debt obligation, if the holder of the REMIC regular interest or the collateralized debt obligation is—

(1) An organization exempt from taxation under section 501(a) or an individual retirement plan;

(2) The United States or a State, the District of Columbia, a possession of the United States, or a political subdivision or a wholly-owned agency or instrumentality of any one or more of the foregoing;

(3) A foreign government, a political subdivision thereof, or an international organization;

(4) A foreign central bank of issue (as defined in § 1.895–1(b)(1) to be a bank which is by law or government sanction the principal authority, other than the government itself, issuing instruments intended to circulate as currency);

(5) A trust described in section 4947(a)(1) (relating to certain charitable trusts);

(6) For calendar quarters and calendar years after 1988, a broker (as defined in section 6045(c) and § 1.6045–1(a)(1));

(7) For calendar quarters and calendar years after 1988, a person who holds the REMIC regular interest or collateralized debt obligation as a middleman (as defined in § 1.6049–4(f)(4));

(8) For calendar quarters and calendar years after 1988, a corporation (as defined in section 7701(a)(3)), whether domestic or foreign;

(9) For calendar quarters and calendar years after 1988, a dealer in securities or commodities required to register as such under the laws of the United States or a State;

(10) For calendar quarters and calendar years after 1988, a real estate investment trust (as defined in section 856);

(11) For calendar quarters and calendar years after 1988, an entity registered at all times during the taxable year under the Investment Company Act of 1940;

(12) For calendar quarters and calendar years after 1988, a common trust fund (as defined in section 584 (a));

(13) For calendar quarters and calendar years after 1988, a financial institution such as a mutual savings bank, savings and loan association, building and loan association, cooperative bank, homestead association, credit union, industrial loan association or bank, or other similar organization;

(14) For calendar quarters and calendar years after 1988, any trust which is exempt from tax under section 664(c) (*i.e.*, a charitable remainder annuity trust or a charitable remainder unitrust); and

(15) For calendar quarters and calendar years after 1988, a REMIC.

(d) *Special provisions and definitions*—(1) *Incorporation of referenced rules.* The special rules of § 1.6049–4(d) are incorporated in this section, as applicable, except that § 1.6049–4(d)(2) does not apply to any REMIC regular interest or any other debt instrument to which section 1272(a)(6) applies. Further, § 1.6049–5(c) does not apply to any REMIC regular interest or any other debt instrument to which section 1272(a)(6) applies.

(2) *Collateralized debt obligation.* For purposes of this section, the term "collateraiized debt obligation" means any debt instrument (except a tax-exempt obligation) described in section 1272(a)(6)(C)(ii) that is issued after December 31, 1986.

(e) *Requirement of furnishing information to certain nominees, corporations, and other specified persons*—(1) *In general.* For calendar quarters and calendar years after 1988, each REMIC or issuer of a collateralized debt obligation (as defined in paragraph (d)(2) of this section) must provide the information specified in paragraph (e)(2) of this section in the time and manner prescribed in paragraph (e)(3) of this

section to any persons specified in paragraph (e)(4) of this section who request the information.

(2) *Information required to be reported.* For each class of REMIC regular interest or collateralized debt obligation and for each calendar quarter specified by the person requesting the information, the REMIC or issuer of a collateralized debt obligation must provide the following information—

(i) The name, address and Employer Identification Number of the REMIC or issuer of a collateralized debt obligation;

(ii) The CUSIP number, account number, serial number, or other identifying number or information, of each specified class of REMIC regular interest or collateralized debt obligation and, for calendar quarters and calendar years after 1991, whether the information being reported is with respect to a REMIC regular interest or a collateralized debt obligation;

(iii) Interest paid on a collateralized debt obligation in the specified class for each calendar quarter, and the aggregate amount for the calendar year if the request is made for the last quarter of the calendar year;

(iv) Interest accrued on a REMIC regular interest in the specified class for each accrual period any day of which is in the specified calendar quarter, and the aggregate amount for the calendar year if the request is made for the last quarter of the calendar year;

(v) Original issue discount accrued on a collateralized debt obligation or REMIC regular interest in the specified class for each accrual period any day of which is in that calendar quarter, and the aggregate amount for the calendar year if the request is made for the last quarter of the calendar year;

(vi) The daily portion of original issue discount per $1,000 of original principal amount (or for calendar quarters prior to 1992, per other specified unit) as determined under section 1272(a)(6) and the regulations thereunder for each accrual period any day of which is in the specified calendar quarter;

(vii) The length of the accrual period;

(viii) The adjusted issue price (as defined in section 1275(a)(4)(B)(ii)) of the REMIC regular interest or the collateralized debt obligation at the beginning of each accrual period any day of which is in the specified calendar quarter;

(ix) The information required by paragraph (f)(3) of this section;

(x) Information required to compute the accrual of market discount including, for calendar years after 1989, the information required by paragraphs (f)(2)(i)(G) or (f)(2)(ii)(K) of this section; and

(xi) For calendar quarters and calendar years after 1991, if the REMIC is a single class REMIC (as described in § 1.67–3T (a)(2)(ii)(B)), the information described in § 1.67–3T (f)(1) and (f)(3)(ii) (A) and (B).

(3) *Time and manner for providing information*—(i) *Manner of providing information.* The information specified in paragraph (e)(2) of this section may be provided as follows—

(A) By telephone;

(B) By written statement sent by first class mail to the address provided by the requesting party;

(C) By causing it to be printed in a publication generally read by and available to persons specified in paragraph (e)(4) and by notifying the requesting persons in writing or by telephone of the publication in which it will appear, the date of its appearance, and, if possible, the page upon which it appears; or

(D) By any other method agreed to by the parties. If the information is published, then the publication should also specify the date and, if possible, the page on which corrections, if any, will be printed.

(ii) *Time for furnishing the information.* Each REMIC or issuer of a collateralized debt obligation must furnish the information specified in paragraph (e)(2) of this section on or before the later of—

(A) The 30th day after the close of the calendar quarter for which the information was requested, or

(B) The day that is two weeks after the receipt of the request.

(4) *Persons entitled to request information.* The following persons may request the information specified in paragraph (e)(2) of this section with respect to a specified class of REMIC regular interests or collateralized debt obligations from a REMIC or issuer of a collateralized debt obligation in the manner prescribed in paragraph (e)(5) of this section—

(i) Any broker who holds on its own behalf or as a nominee any REMIC regular interest or collateralized debt obligation in the specified class,

(ii) Any middleman who is required to make an information return under section 6049 (a) and paragraph (b)(2) of this section and who holds as a nominee any REMIC regular interest or collateralized debt obligation in the specified class,

(iii) Any corporation or non-calendar year taxpayer who holds a REMIC regular interest or collateralized debt obligation in the specified class directly, rather than through a nominee,

(iv) Any other person specified in paragraphs (c)(9) through (15) of this section who holds a REMIC regular interest or collateralized debt obligation in the specified class directly, rather than through a nominee, or

(v) A representative or agent for a person specified in paragraphs (e)(4)(i), (ii), (iii) or (iv) of this section.

(5) *Manner of requesting information from the REMIC.* A requesting person specified in paragraph (e)(4) of this section should obtain Internal Revenue Service Publication 938, Real Estate Mortgage Investment Conduit (REMIC) and Collateralized Debt Obligation Reporting Information (or other guidance published by the Internal Revenue Service). This publication contains a directory of REMICs and issuers of collateralized debt obligations. The requesting person can locate the REMIC or issuer from whom information is needed and request the information from the official or representative of the REMIC or issuer in the manner specified in the publication. The publication will specify either an address or an address and telephone number. If the publication provides only an address, the request must be made in writing and mailed to the specified address. Further, the request must specify the calendar quarters (*e.g.*, all calendar quarters in 1989) and the classes of REMIC regular interests or collateralized debt obligations for which information is needed.

(f) *Requirement of furnishing statement to recipient*—(1) *In general.* Every person filing a Form 1099 under section 6049 (a) and this section must furnish to the holder (the person whose identifying number is required to be shown on the form) a written statement showing the information required by paragraph (f)(2) of this section. The written statement provided by a REMIC must also contain the information specified in paragraph (f)(3) of this section.

(2) *Form of statement*—(i) *REMIC regular interests and collateralized debt obligations not issued with original issue discount.* For a REMIC regular interest or collateralized debt obligation issued without original issue discount, the written statement must specify for the calendar year the following information—

(A) The aggregate amount shown on Form 1099 to be included in income by that person for the calendar year;

(B) The name, address, and taxpayer identification number of the person required to furnish this statement;

(C) The name, address, and taxpayer identification number of the person who must include the amount of interest in gross income;

(D) A legend, including a statement that the amount is being reported to the Internal Revenue Service, that conforms to the legend on Form 1099, Copy B, For Recipient;

(E) The CUSIP number, account number, serial number, or other identifying number or information, of each REMIC regular interest or collateralized debt obligation, with respect to which a return is being made;

(F) All other items shown on Form 1099 for the calendar year; and

(G) Information necessary to compute accrual of market discount. For calendar years after 1989, this information includes:

(*1*) For each accrual period in the calendar year—

(*i*) A fraction, the numerator of which equals the interest, other than original issue discount, allocable to that accrual period, and the denominator of which equals the interest, other than original issue discount, allocable to that accrual period plus the remaining interest, other than original issue discount, as of the end of that accrual period, or

(*ii*) [Reserved]

(*2*) [Reserved]

The interest allocable to each accrual period and the remaining interest are calculated by taking into account events which have occurred before the close of the accrual period and the prepayment assumption, if any, determined as of the startup day (as defined in section 860G (a)(9)) of the REMIC or the issue date (as defined in section 1275 (a)(2)) of the collateralized debt obligation that would be made in computing original issue discount if the debt instrument had been issued with original issue discount.

(ii) *REMIC regular interests and collateralized debt obligations issued with original issue discount.* For a REMIC regular interest or collateralized debt obligation issued with original issue discount, the written statement must specify for the calendar year the following information—

(A) The aggregate amount of original issue discount includible in the gross income of the holder for the calendar year with respect to the REMIC regular interest or the collateralized debt obligation;

(B) The aggregate amount of interest, other than original issue discount, includible in the gross income of the holder for the calendar year with respect to the REMIC regular interest or the collateralized debt obligation;

(C) The name, address, and taxpayer identification number of the person required to file this form;

(D) The name, address, and taxpayer identification number of the person who must include the amount of interest specified in paragraphs (f)(2)(ii) (A) and (B) of this section in gross income;

(E) For calendar years after 1987, the daily portion of original issue discount per $1,000 of original principal amount (or for calendar years prior to 1992, per other specified unit) as determined under section 1272(a)(6) and the regulations thereunder for each accrual period any day of which is in that calendar year;

(F) For calendar years after 1987, the length of the accrual period;

(G) All other items shown on Form 1099 for the calendar year;

(H) A legend, including a statement that the information required under paragraphs (f)(2)(ii) (A), (B), (C), (D) and (G) of this section is being reported to the Internal Revenue Service, that conforms to the legend on Form 1099, Copy B, For Recipient;

(I) For calendar years after 1987, the adjusted issue price (as defined in section 1275(a)(4)(B)(ii)) of the REMIC regular interest or the collateralized debt obligation at the beginning of each accrual period with respect to which interest income is required to be reported on Form 1099 for the calendar year;

(J) The CUSIP number, account number, serial number, or other identifying number or information, of each class of REMIC regular interest or collateralized debt obligation, with respect to which a return is being made; and

(K) Information necessary to compute accrual of market discount. For calendar years after 1989, this information includes:

(*1*) For each accrual period in the calendar year, a fraction, the numerator of which equals the original issue discount allocable to that accrual period, and the denominator of which equals the original issue discount allocable to that accrual period plus the remaining original issue discount as of the end of that accrual period, and

(*2*) [Reserved]

The original issue discount allocable to each accrual period and the remaining original issue discount are calculated by taking into account events which have occurred before the close of the accrual period and the prepayment assumption determined as of the startup day (as defined in section 860G (a)(9)) of the REMIC or the issue date (as defined in section 1275 (a)(2)) of the collateralized debt obligation.

(3) *Information with respect to REMIC assets*—(i) *95 percent asset test.* For calendar years after 1988, the written statement provided by a REMIC must also contain the following information for each calendar quarter—

(A) The percentage of REMIC assets that are qualifying real property loans under section 593,

(B) The percentage of REMIC assets that are assets described in section 7701 (a)(19), and

(C) The percentage of REMIC assets that are real estate assets defined in section 856 (c)(6)(B), computed by reference to the average adjusted basis (as defined in section 1011) of the REMIC assets during the calendar quarter (as described in § 1.860F–4 (e)(1)(iii)). If for any calendar quarter the percentage of REMIC assets represented by a category is at least 95 percent, then the statement need only specify that the percentage for that category, for that calendar quarter, was at least 95 percent.

(ii) *Additional information required if the 95 percent test not met.* If, for any calendar quarter after 1988, less than 95 percent of the assets of the REMIC are real estate assets defined in section 856 (c)(6)(B), then, for that calendar quarter, the REMIC's written statement must also provide to any real estate investment trust (REIT) that holds a regular interest the following information—

(A) The percentage of REMIC assets described in section 856 (c)(5)(A), computed by reference to the average adjusted basis of the REMIC assets during the calendar quarter (as described in § 1.860F–4 (e)(1)(iii)),

(B) The percentage of REMIC gross income (other than gross income from prohibited transactions defined in section 860F (a)(2)) described in section 856 (c)(3)(A) through (E), computed as of the close of the calendar quarter, and

(C) The percentage of REMIC gross income (other than gross income from prohibited transactions defined in section 860F (a)(2)) described in section 856 (c)(3)(F), computed as of the close of the calendar quarter. For purposes of this paragraph (f)(3)(ii)(C), the term "foreclosure property" contained in section 856 (c)(3)(F) shall have the meaning specified in section 860G (a)(8).

In determining whether a REIT satisfies the limitations of section 856 (c)(2), all REMIC gross income is deemed to be derived from a source specified in section 856 (c)(2).

(iii) *Calendar years 1988 and 1989.* For calendar years 1988 and 1989, the percentage of assets required in paragraphs (f)(3)(i) and (ii) of this section may be computed by reference to the average fair market value of the assets of the REMIC during the calendar quarter (as described in § 1.860F–4 (e)(1)(iii)), instead of by reference to the

average adjusted basis of the assets of the REMIC during the calendar quarter.

(4) *Cross-reference.* See § 1.67–3T (f)(2)(ii) for additional information that may be separately stated on the statement required by this paragraph (f) section with respect to certain holders of regular interests in REMICs described in § 1.67–3T (a)(2)(ii).

(5) *Time for furnishing statements*—(i) *For calendar quarters and calendar years after 1988.* For calendar quarters and calendar years after 1988, each statement required under this paragraph (f) of to be furnished to any person for a calendar year with respect to amounts includible as interest must be furnished to that person after April 30 of that year and on or before March 15 of the following year, but not before the final interest payment (if any) for the calendar year.

(ii) *For calendar quarters and calendar years prior to 1989*—(A) *In general.* For calendar quarters and calendar years prior to 1989, each statement required under this paragraph (f) to be furnished to any person for a calendar year with respect to amounts includible as interest must be furnished to that person after April 30 of that year and on or before January 31 of the following year, but not before the final interest payment (if any) for the calendar year.

(B) *Nominee reporting.* For calendar quarters and calendar years prior to 1989, each statement required under this paragraph (f) to be furnished by a nominee must be furnished to the actual owner of a REMIC regular interest or a collateralized debt obligation to which section 1272 (a)(6) applies on or before the later of—

(*1*) The 30th day after the nominee receives such information, or

(*2*) January 31 of the year following the calendar year to which the statement relates.

(6) *Special rules*—(i) *Copy of Form 1099 permissible.* The requirements of this paragraph (f) for the furnishing of a statement to any person, including the legend requirement of paragraphs (f)(2)(i)(D) and (f)(2)(ii)(H) of this section, may be met by furnishing to that person—

(A) A copy of the Form 1099 filed pursuant to paragraph (b)(2) of this section in respect of that person, plus a separate statement (mailed with the Form 1099) that contains the information described in paragraphs (f)(2)(i)(E) and (G), (f)(2)(ii)(E), (F), (I), and (K), (f)(3), and (f)(4) of this section, if applicable, of this section, or

(B) A substitute form that contains all the information required under this paragraph (f) and that complies with any current revenue procedure concerning the reproduction of paper substitutes of Forms 1099 and the furnishing of substitute statements to forms recipients. The inclusion on the substitute form of the information specified in this paragraph (f) that is not required by the official Forms 1099 will not cause the substitute form to fail to meet any requirements that limit the information that may be provided with a substitute form.

(ii) *Statement furnished by mail.* A statement mailed to the last known address of any person shall be considered to be furnished to that person within the meaning of this section.

(7) *Requirement that nominees furnish information to corporations and certain other specified persons*—(i) *In general.* For calendar quarters and calendar years after 1988, every broker or middleman must provide in writing or by telephone the information specified in paragraph (e)(2) of this section to—

(A) A corporation,

(B) A non-calendar year taxpayer, or

(C) Any other person specified in paragraphs (c)(9) through (15) of this section

who requests the information and for whom the broker or middleman holds as a nominee a REMIC regular interest or a collateralized debt obligation. A corporation, non-calendar year taxpayer, or any other person specified in paragraphs (c)(9) through (15) of this section may request the information in writing or by telephone for any REMIC regular interest or collateralized debt obligation for calendar quarters any day of which the person held the interest or obligation.

(ii) *Time for furnishing information.* The statement required in paragraph (f)(7)(i) of this section must be furnished on or before the later of—

(A) The 45th day after receipt of the request,

(B) The 45th day after the close of the calendar quarter for which the information was requested, or

(C) If the request is made for the last calendar quarter in a year, March 15 of the year following the calendar quarter for which the information was requested.

(g) *Information required to be set forth on face of debt instrument*—(1) *In general.* In the case of any REMIC regular interest or collateralized debt obligation that is issued after April 8, 1988, and that has original issue discount, the issuer must set forth on the face of the REMIC regular interest or collateralized debt obligation—

(i) The amount of the original issue discount,

(ii) The issue date,

(iii) The rate at which interest is payable (if any) as of the issue date,

(iv) The Yield to maturity, including a statement as to the assumption made under section 1272 (a)(6)(B)(iii),

(v) The method used to determine yield where there is a short accrual period, and

(vi) The amount of the original issue discount allowable to the short accrual period based on the prepayment assumption determined on the startup day (as defined in section 860G (a)(9)) or the issue date (as defined in section 1275 (a)(2)).

In cases where it is not possible to set forth the information required by this paragraph (g) on the face of the REMIC regular interest or collateralized debt obligation by the issue date, the issuer must deliver to the holder a sticker containing this information within 10 days after the issue date. For rules relating to the penalty imposed for failure to show the information required by this paragraph (g) on the regular interest or collateralized debt obligation, see section 6706 (a) and the regulations thereunder.

(2) *Issuer.* For purposes of this paragraph (g), the term "issuer" includes not only domestic issuers but also any foreign issuer who is otherwise subject to United States income tax law, unless the issue is neither listed on an established securities market (as defined in § 1.453–3 (d)(4)) in the United States nor offered for sale or resale in the United States in connection with its original issuance.

PART 5c—TEMPORARY INCOME TAX REGULATIONS UNDER THE ECONOMIC RECOVERY TAX ACT OF 1981

Par. 8. The authority citation for part 5c is revised to read as follows:

Authority: Secs. 168(f)(8)(G) and 7805 of the Internal Revenue Code of 1954 (95 Stat. 216 * * *)

§ 5C.128.1 [Removed]

Par. 9. Section 5c.128–1 is removed.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 10. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101.(c) [Amended]

Par. 11. Section 602.101 (c) is amended by removing in the table—

"§ 1.860D-1T . . . . . 1545–1018",
"§ 1.860F–4T . . . . . 1545–1018",
"§ 1.6049–7T . . . . . 1545–1018",
"§ 5c.128–1 . . . . . 1545–0012", and
"§ 5c.128–1 (d) . . . . . 1545–0123".

Dated: August 22, 1991.

Michael J. Murphy,

Acting Commissioner of Internal Revenue.

Approved:

Kenneth W. Gideon,

Assistant Secretary of the Treasury.

[FR Doc. 91–22848 Filed 9–27–91; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[FI-61-91]

RIN 1545-AP97

Notice of Allocation of Allocable Investment Expense

AGENCY: Internal Revenue Service, Treasury.

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

SUMMARY: This document provides proposed regulations that relate to single-class Real Estate Mortgage Investment Conduits (REMICs) and the market discount fraction reported with other REMIC information. Elsewhere in this **Federal Register**, the Internal Revenue Service is issuing final and temporary regulations relating to reporting requirements with respect to REMICs. This regulation proposes to adopt as final regulations the temporary regulations relating to reporting requirements with respect to single-class REMICs and the market discount fraction reported with other REMIC information. The text of those temporary regulations also serves as the comment document for this notice of proposed rulemaking.

DATES: Written comments must be received by November 14, 1991. A public hearing has been scheduled for December 5, 1991. Requests to speak at the hearing, along with outlines of oral, comments, must be received by November 14, 1991. See the notice of hearing published elsewhere in this issue of the **Federal Register**.

ADDRESSES: Send comments and requests to speak at the public hearing, along with outlines of oral comments, to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attention: CC:CORP:T:R (FI-61-91), room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Felicia Daniels, with respect to the public hearing, telephone 202-566-3935, and James W. C. Canup, with respect to the proposed regulations, telephone 202-566-6624. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has 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 collection of information should be sent 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, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer T:FP, Washington, DC 20224.

The collection of information in this regulation is in § 1.67-3T(f). This information is required by the Internal Revenue Service to provide investors in single-class REMICs with their amount of allocable share of the REMIC's investment expenses. This information will be used by individuals to prepare their Federal income tax returns. The likely respondents/recordkeepers are for-profit institutions.

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/recordkeepers may require greater or less time, depending on their particular circumstances. The estimated total annual reporting and/or recordkeeping burden for the requirements contained in § 1.67-3T (f)(1), (2), (3), (4)(i), (5), and (6) of this regulation is reflected on Schedule Q and Forms 1099-INT and 1099-OID. Estimated total annual reporting and/or recordkeeping burden for § 1.67-3T(f)(4)(ii): 8 hours.

The estimated annual burden per respondent/recordkeeper varies from 0.1 hours to 1.0 hours, depending on individual circumstances, with an estimated average of 0.3. hours. Estimated number of respondents and/or recordkeepers: 5. Estimated annual frequency of responses (for reporting requirements only): 5.

Background

On March 9, 1988, temporary regulations [T.D. 8186] under section 67 and 6049(d)(7) were published in the **Federal Register** (53 FR 7504). Section 1.67-3T(f) of those regulations was amended and § 1.6049-7T was revised on September 7, 1989, [T.D. 8259] (54 FR 37098). Temporary regulations published elsewhere in this issue of the **Federal Register** also revise §§ 1.67-3T(f) and 1.6049-7T.

Explanation of Provisions

Section 1.67-3T(f) provides that a single-class REMIC (generally, one that would be classified as a trust had it not elected REMIC status) must furnish quarterly information to certain of its regular interest holders showing each such interest holder's allocable share of the REMIC's investment expenses. The quarterly information may be furnished annually and, as provided in § 1.67-3T(f)(2)(ii), may be separately stated on the statement containing Form 1099 information instead of in a separate statement provided in a separate mailing. The REMIC, however, must also provide the quarterly information to a person who requests information pursuant to § 1.6049-7(e) with the information required by that section.

These regulations also propose to permit the use of de minimis original issue discount in computing the market discount fraction required to be reported with other financial information with respect to REMICs and other collateralized debt obligations.

These regulations are proposed to be effective as prescribed in the temporary regulations.

Special Analyses

It has been determined that these proposed regulations will not be major regulations 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, the proposed regulations are being sent to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Requests To Appear at the Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are timely submitted (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying in their entirety. A public hearing has been scheduled for December 5, 1991. See the notice of hearing published elsewhere in this issue of the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is James W. C. Canup, Office of the Assistant Chief Counsel (Financial Institutions and Products), Internal Revenue Service. However, personnel from other offices

of the IRS and Treasury Department participated in their development.

Michael J. Murphy,

Acting Commissioner of Internal Revenue.

[FR Doc. 91-22851 Filed 9-27-91; 8:45 am]

BILLING CODE 4830-01-M

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26 CFR Part 1

[FI-38-91]

RIN 1545-AP73

Extension of Time for Real Estate Mortgage Investment Conduits to Provide Reporting Information

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed income tax regulations relating to real estate mortgage investment conduits (REMICs). The relevant provisions in the Internal Revenue Code were added or amended by the Tax Reform Act of 1986 and by the Technical and Miscellaneous Revenue Act of 1988. These regulations extend the time for REMICs and certain other issuers to provide financial information to brokers, middlemen, and certain holders of REMIC interests or other debt instruments.

DATES: Written comments must be received by November 14, 1991. A public hearing has been scheduled for December 5, 1991. Requests to speak at the hearing, along with outlines of oral comments, must be received by November 14, 1991. See the notice of hearing published elsewhere in this issue of the **Federal Register.**

ADDRESSES: Send comments and requests to speak at the public hearing, along with outlines of oral comments, to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attention: CC:CORP:T:R (FI-38-91), room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Felicia Daniels, with respect to the public hearing, telephone 202-566-3935, and James W.C. Canup, with respect to the proposed regulations, telephone 202-566-6624. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

Background

Section 671 of the Tax Reform Act of 1986 (the 1986 Act) added to the Internal Revenue Code (Code) new sections 860A through 860G to provide rules relating to real estate mortgage investment conduits. Section 674 of the 1986 Act amended section 6049 to impose certain information reporting requirements with respect to REMIC interests and certain other debt instruments. Section 1006(t) of the Technical and Miscellaneous Revenue Act of 1988 (TAMRA) amended certain provisions in sections 860A through 860G and section 6049.

Elsewhere in this **Federal Register**, the Internal Revenue Service is issuing final and temporary regulations under sections 67, 860D, 860F, and 6049 of the Code. Those regulations generally govern the filing of REMIC tax returns and require notice of income and other information to be provided to investors in REMICs and other collateralized debt obligations. This document proposes amendments to those final and temporary regulations.

Explanation of Provisions

Sections 1.67-3T(f), 1.860F-4(e)(2), and 1.6049-7 (e)(3) and (f)(7) generally require certain financial information concerning REMIC interests and collateralized debt obligations to be furnished on or before the 30th day after the close of a calendar quarter or calendar year (the 45th day in the case of a non-calendar year taxpayer requesting information from a broker or middleman). The information must be furnished to persons specified in § 1.6049-7(e)(4), which includes certain brokers and middlemen. These brokers and middlemen are required by § 1.6049-7(b)(2) to file information returns with the Internal Revenue Service by February 28 of the following year (absent any extensions of time) and by § 1.6049-7(f) to furnish the holder with a written statement by March 15 of the following year.

Commentators have indicated that in many instances the 30-day time period allotted for REMICs and issuers of collateralized debt obligations to obtain, process, and report the financial information on the underlying mortgages or obligations is not sufficient.

In response to this concern, the proposed regulations would amend the existing regulations to require the financial information to be reported on or before the 41st day after the close of a calendar quarter or calendar year (the 55th day in the case of a non-calendar year taxpayer requesting information from a broker or middleman). The dates by which brokers and middlemen must report to the Service and holders, however, would not be extended. The proposed regulations would not change the information to be reported.

These regulations are proposed to be effective for calendar quarters and calendar years ending after November 29, 1991.

Special Analyses

It has been determined that these proposed regulations will not be major regulations 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, the proposed regulations are being sent to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Requests to Appear at the Public Hearing

Before adopting 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 in their entirety. A public hearing has been scheduled for November 13, 1991. See the notice of hearing published elsewhere in this issue of the **Federal Register.**

Drafting Information

The principal author of these proposed regulations is James W.C. Canup, Office of the Assistant Chief Counsel (Financial Institutions and Products), Internal Revenue Service. However, personnel from other offices of the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR 1.61-1 Through 1.67-4T

Income tax, Reporting and recordkeeping requirements.

26 CFR 1.860D-1 Through 1.860F-4

Income taxes, Investments, Mortgages, Reporting and recordkeeping requirements.

26 CFR 1.6031-1 Through 1.6060-1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, title 26, part 1, of the Code of Federal Regulations is proposed to be amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

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

Authority: Sec. 7805, 68A Stat. 917; 26 U.S.C. 7805 * * *

Par. 2. Section 1.67–3T is amended by revising the last sentence of paragraph (f)(2)(ii)(A) to read as follows:

§ 1.67–3T Allocation of expenses by real estate mortgage investment conduits (temporary).

* * * * *

(f) * * *

(2) * * *

(ii) * * *

(A) * * * The separate statement provided in a separate mailing must be furnished to each pass-through interest holder no later than the 41st day following the close of the calendar year.

* * * * *

Par. 3. Section 1.860F–4 is amended by revising paragraph (e)(2)(i) to read as follows:

§ 1.860F–4 REMIC reporting requirements and other administrative rules.

* * * * *

(e) * * *

(2) * * *

(i) *In general.* Schedule Q must be mailed (or otherwise delivered) to each holder of a residual interest during a calendar quarter no later than the 41st day following the close of the calendar quarter.

* * * * *

Par. 4. Section 1.6049–7 is amended by revising paragraphs (e)(3)(ii)(A) and (f)(7)(ii) to read as follows:

§ 1.6049–7 Returns of information with respect to REMIC regular interests and collateralized debt obligations.

* * * * *

(e) * * *

(3) * * *

(ii) * * *

(A) The 41st day after the close of the calendar quarter for which the information was requested, or

* * * * *

(f) * * *

(7) * * *

(ii) *Time for furnishing information.* The statement required in paragraph (f)(7)(i) of this section must be furnished on or before the later of—

(A) The 45th day after receipt of the request,

(B) The 55th day after the close of the calendar quarter for which the information was requested, or

(C) If the information is requested for the last calendar quarter in a calendar year, March 15 of the year following the calendar quarter for which the information was requested.

* * * * *

Michael J. Murphy,

Acting Commissioner of Internal Revenue.

[FR Doc. 91–22850 Filed 9–27–91; 8:45 am]

BILLING CODE 4830–01–M

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26 CFR Part 1

[FI–38–91 and FI–61–91]

RIN 1545–AP73 and 1545–AP97

Extension of Time for Real Estate Mortgage Investment Conduits to Provide for Reporting Information and Notice of Allocation of Allocable Investment Expense; Public Hearing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing relating to single-class Real Estate Mortgage Investment Conduits (REMICs), the market discount fraction reported with other REMIC information and the extension of time for REMICs to provide reporting information.

DATES: The public hearing will be held on December 5, 1991, and will begin immediately following the public hearing scheduled at 10 a.m. for FI–88–86. Requests to speak and outlines of oral comments must be received by November 21, 1991.

ADDRESSES: The public hearing will be in the Internal Revenue Service Auditorium, 7th floor, 7400 corridor, 1111 Constitution Avenue, NW., Washington, DC. Requests to speak and outlines of oral comments should be submitted to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R, (FI–38–91 and FI–61–91), room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Felicia A. Daniels of the Regulations Unit, Assistant Chief Counsel (Corporate), 202–566–3935, (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under sections 67, 860F and 6049 of the Internal Revenue Code. The proposed regulations appear elsewhere in this issue of the **Federal Register.**

The rules of § 601.601 (a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Thursday, November 21, 1991, an outline of oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited 10 minutes for an oral presentation exclusive of the time consumed by the questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be permitted beyond the lobby of the Internal Revenue Building until 9:15 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of the Internal Revenue.

Dale D. Goode,

Federal Register Liaison Office, Assistant Chief Counsel (Corporate).

[FR Doc. 91–22849 Filed 9–27–91; 8:45 am]

BILLING CODE 4830–01–M

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26 CFR Parts 1 and 301

[FI–88–86]

RIN 1545–AJ35

Real Estate Mortgage Investment Conduits

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains a notice of proposed rulemaking relating to real estate mortgage investment conduits, or REMICs. This action is necessary because of changes to the applicable tax law made by the Tax Reform Act of 1986 and by the Technical and Miscellaneous Revenue Act of 1988. The proposed regulations contained in this document provide guidance to REMICS and their investors.

DATES: Written comments, requests to appear, and outlines of oral comments to be submitted at the public hearing scheduled for December 5, 1991, must be received by November 2l, 1991. See the notice of public hearing on these proposed regulations published elsewhere in this issue of the **Federal Register.**

ADDRESSES: Send comments to: Commissioner of Internal Revenue, P.O. Box 7604, Ben Franklin Station,

Attention: CC:CORP:T:R (FI–88–86), room 5228, Washington, D.C. 20044.

FOR FURTHER INFORMATION CONTACT: Carol A. Schwartz or Tom Lyden, (telephone 202–566–3297) (Not a toll-free number), of the Office of Assistant Chief Counsel, Financial Institutions and Products, 1111 Constitution Avenue, N.W. Washington, D.C. 20224 Attention CC:FI&P (FI–88–86).

SUPPLEMENTARY INFORMATION:

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 should be sent 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, with copies to the Internal Revenue service, Attention: IRS Report Clearance Officer T:FP, Washington, DC 20224.

The collections of information in this regulation are in § 1.860E–2 (a) and (b). This information is required by the Internal Revenue Service to assess and collect any tax imposed under section 860E(e). This information will be used to show that no tax is due, or to calculate and pay any excise tax that is due under section 860E(e). The likely respondents and/or recordkeepers are businesses or other for-profit institutions.

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/recordkeepers may require more or less time, depending on their particular circumstances. Collecting the affidavit to ensure that no tax will be due is estimated to require:

Estimated total annual reporting burden: 375 hrs.

Estimated average annual burden per respondent: .25 hrs.

Estimated number of respondents and/or recordkeepers: 1500.

Estimated annual frequency of responses: 1.

Furnishing the information to the transferor or passthru is estimated to require:

Estimated total annual reporting burden: 150 hrs.

Estimated average annual burden per respondent: 1.5 hrs.

Estimated number of respondents and/or recordkeepers: 100.

Estimated annual frequency of responses: 1.

Background

This document sets forth proposed income tax regulations (26 CFR parts 1 and 301) under sections 860A through 860G of the Internal Revenue Code of 1986 (Code) and proposes conforming amendments to other sections of the income tax regulations. Section 671 of the Tax Reform Act of 1986 (the 1986 Act), Public Law No. 99–514, 100 Stat. 2309, added to the Code new sections 860A through 860G and amended other sections of the Code to provide rules relating to real estate mortgage investment conduits, or REMICs. Section 1006(t) of the Technical and Miscellaneous Revenue Act of 1988 (TAMRA), Public Law No. 100–647, 102 Stat. 3419, amended section 671 of the 1986 Act. These provisions generally take effect, under section 675(a) of the 1986 Act, as amended by section 1006 (w)(1) of TAMRA, on January 1, 1987.

Proposed Effective Dates

Except as otherwise provided below, these regulations are proposed to be effective for qualified entities whose startup day is on or after November 12, 1991. However, § 1.860E–1(c) (concerning transfers of noneconomic residual interests), and § 1.860G–3(a)(1) (concerning transfers of residual interests to foreign holders), are proposed to be effective for transfers on or after November 12, 1991. The significant value requirement in § 1.860E–1(a)(3) (concerning excess inclusions accruing to organizations to which section 593 applies) is generally proposed to be effective for residual interests acquired on or after November 12, 1991. The significant value requirement in § 1.860E–1(a)(3) does not apply, however, to residual interests acquired by a sponsor at formation of a REMIC if more than 50 percent of the interests in the REMIC (determined by reference to issue price) are sold to unrelated investors before November 12, 1991. Section 1.860E–2(a)(1) (concerning the excise tax imposed by section 860E(e)(1)) is proposed to be effective for transfers of residual interests to disqualified organizations after March 31, 1988. Section 1.860E–2(b)(1) is proposed to be effective for excess inclusions accruing to pass-thru entities after March 31, 1988.

Guidance with respect to transactions that occurred before the proposed effective dates of these regulations was provided in Notice 87–41, 1987–1 C.B. 500, and Notice 87–67, 1987–2 C.B. 377.

Explanation of Provisions

I. Qualification as a REMIC

In general, a REMIC is a mortgage pool for which a REMIC election is filed and which satisfies certain requirements concerning the composition of its assets and the nature of its investors' interests. It must also make arrangements to prevent entities not subject to tax from holding certain of its interests. A REMIC may, for state law purposes, be a corporation, partnership, trust, or a segregated pool of assets that is not a separate legal entity.

A. Asset Test

To qualify for REMIC treatment, an organization must, among other things, satisfy certain tests concerning the assets it holds. Specifically, except during an initial startup period and during a limited liquidation period, substantially all of the organization's assets must consist of qualified mortgages and permitted investments (qualified reserve assets, cash flow investments, and foreclosure property). The initial startup period extends from the startup day to the end of the third calendar month beginning after the startup day. Section 860D(a)(4). Generally, the startup day is the day on which the REMIC issues all of its regular and residual interests. Section 860G(a)(9).

Congress intended that the term "substantially all" be interpreted to allow a REMIC to own only a de minimis amount of assets that are not qualified mortgages or permitted investments. H.R. Conf. Rep. No. 841, 99th Cong., 2d Sess. II–226. Proposed § 1.860D–1(b)(1)(ii) provides a safe harbor if the aggregate of the adjusted bases of a REMIC's non-permitted assets is less than one percent of the aggregate of the adjusted bases of all of the REMIC's assets. The Service found a one percent safe harbor to be adequate in light of the proposed regulations' definition of qualified mortgages and permitted investments.

1. Qualified mortgages. The term "qualified mortgage" includes any obligation (including any participation or certificate of beneficial ownership in an obligation) that is principally secured by an interest in real property and that is either transferred to the REMIC on the startup day in exchange for regular or residual interests or purchased by the REMIC within a three month startup period pursuant to a fixed price contract in effect on the startup day. Section 860G(a)(3).

Real property for purposes of this test is defined in proposed § 1.860G–2(a)(4).

The definition is essentially the same as the definition of real property used in the real estate investment trust (REIT) regulations. See § 1.856–3(d). Thus, local law definitions of real property do not control for REMIC qualification purposes.

Proposed § 1.860G–2(a)(1) provides that an obligation is principally secured by an interest in real property only if the fair market value of the real property securing the obligation either (1) was at least equal to 80% of the issue price of the obligation at the time the obligation was originated, or (2) is at least equal to 80% of the adjusted issue price of the obligation at the time it is contributed to the REMIC. The fair market value of the property is to be determined after taking into account other liens encumbering the property.

If the sponsor of a REMIC reasonably believes that an obligation satisfies the principally secured test, then it is deemed to have satisfied the test. If, however, it is later discovered that the obligation did not in fact satisfy the principally secured test, then the obligation becomes a defective obligation on the date of discovery. A reasonable belief for purposes of the principally secured test may be based on representations from the originator of a loan concerning its loan to value ratio. Proposed § 1.860G–2(a)(3).

Under proposed § 1.860G–2(a)(5), a mortgage pass-thru certificate is treated as an obligation secured by an interest in real property. However, a debt obligation, other than a REMIC regular interest, that is secured by other debt obligations that are secured by interests in real property is not itself principally secured by an interest in real property. Proposed § 1.860G–2(a)(6). Thus, a collateralized mortgage obligation (CMO) issued by an entity that did not elect REMIC status is not a qualified mortgage.

Proposed § 1.860G–2(b) provides that a qualified mortgage does not cease to be a qualified mortgage solely because the terms of the mortgage are changed due to a default or delinquency on the mortgage. Further, the assumption of a qualified mortgage, or the waiver of a due on sale provision contained in the terms of a qualified mortgage, does not affect its status as a qualified mortgage. Finally, if a REMIC holds as a qualified mortgage a convertible adjustable rate mortgage (for example, one where the mortgagor can opt to convert a floating rate to the prevailing fixed rate), the conversion from one rate to another does not affect the status of the mortgage as a qualified mortgage.

The term "qualified mortgage" is defined to include a qualified replacement mortgage. Section 860G(a)(3)(B). A qualified replacement mortgage is one that would have been a qualified mortgage had it been contributed to the REMIC on the startup day, and either is acquired by the REMIC in exchange for another obligation within the three month startup period, or is acquired by the REMIC in exchange for a defective obligation within two years of the startup day. Section 860G(a)(4).

Proposed § 1.860G–2(f)(1) defines a defective obligation as a qualified mortgage that is in default or with respect to which default is reasonably foreseeable, that was fraudulently procured by the mortgagor, or that was transferred to the REMIC in violation of a representation or warranty, customary in the industry, given by the sponsor or prior owner of the mortgage concerning the characteristics of the mortgage, or the characteristics of a pool of mortgages of which the mortgage is a part. A defective obligation is also an obligation that, despite the reasonable belief of the sponsor at the time the mortgage was contributed to the REMIC, does not in fact meet the principally secured requirement of proposed § 1.860G–2(a)(1).

If it is discovered that an obligation is a defective obligation, and the defect is one that, had it been discovered before the startup day, would have prevented the obligation from being a qualified mortgage, then, unless the REMIC either causes the defect to be cured or disposes of the obligation within 90 days of the discovery, the obligation ceases to be a qualified mortgage at the end of the 90 day period. Proposed § 1.860G–2(f)(2). The obligation is, nevertheless, a qualified mortgage from the startup day until the end of the 90 day period. Of course, if the defect is one that does not affect the status of the obligation as a qualified mortgage, then the obligation continues to be a qualified mortgage regardless of whether the defect is cured.

Commercial mortgages often contain defeasance provisions whereby the mortgagee may release its lien on the real property securing the mortgage in return for the mortgagor's pledge of substitute collateral. Proposed § 1.860G–2(a)(7) provides that the defeasance of a qualified mortgage does not affect its status as a qualified mortgage only if certain conditions are satisfied. Specifically, the substitute collateral must be government securities, the defeasance must be undertaken pursuant to the terms of the mortgage, the lien must be released to facilitate the mortgagor's disposition of the encumbered property, and the defeasance must not occur within two years of the startup day. These conditions are intended to ensure that the defeasance transaction is undertaken as part of a customary commercial transaction, and not as part of an arrangement to collateralize a REMIC offering with obligations that are not real estate mortgages.

2. Credit enhancement. Some form of credit enhancement is employed in most REMIC offerings to improve the marketability of the REMIC interests. The function of all credit enhancement arrangements is, in general, to provide payments to replace defaulted or delinquent payments on qualified mortgages and thereby ensure timely payments to REMIC interest holders. Credit enhancement contracts can take many forms, such as mortgage pool insurance contracts, certificate insurance contracts, third party guarantee arrangements, and bank letters of credit.

Additional credit enhancement may be provided by the institutions servicing the mortgages held by the REMIC. Under the terms of most pooling and servicing agreements, the mortgage servicer agrees to advance to the REMIC scheduled payments on the mortgages it services even if the servicer does not receive all of the payments due from the mortgagors. Further, servicers frequently agree to pay property taxes and hazard insurance premiums on mortgaged properties to the extent the mortgagor fails to make such payments. Usually, the servicer is permitted or required to make such advances only if it reasonably expects to collect the advances from future payments from the mortgagor.

For purposes of the asset test in section 860D(a)(4), all of the above described forms of credit enhancement are treated as incidents of the pooled mortgages and not as separate assets of the REMIC. Proposed § 1.860G–2(c). Thus, proposed § 1.860G–2(g)(1)(ii) treats payments received under credit enhancement arrangements as payments on the qualified mortgages. Similarly, the credit enhancer's right to be reimbursed or the right to be subrogated to the REMIC's claim on a defaulted mortgage is not viewed as an interest in the REMIC. Proposed § 1.860D–1(b)(2)(iii).

3. Cash flow investments. A cash flow investment is any investment of amounts received under qualified mortgages for a temporary period before distribution to holders of interests in the REMIC. Section 860G(a)(6). Proposed § 1.860G–2(g)(1) specifies that a cash flow investment must be a passive

investment that earns a return in the nature of interest.

Because a cash flow investment is intended to be a temporary investment, proposed § 1.860G–2(g)(1)(iii) provides that the period between receipt of amounts from qualified mortgages and distribution to interest holders may not exceed one year and thirty days. This test is intended to be flexible enough to allow sponsors to create interests that provide for monthly, quarterly, or annual payments, and at the same time ensure that REMICs are always self-liquidating pools and not vehicles for the accumulation of assets.

4. Qualified reserve funds. A qualified reserve asset is any intangible property that is held for investment and is part of a qualified reserve fund. Section 860C(a)(7)(A). A qualified reserve fund is any reasonably required reserve to provide for (1) full payment of expenses of the REMIC, or (2) amounts due on regular or residual interests in the event of defaults or delinquencies on qualified mortgages, lower than expected returns on cash flow investments, or interest shortfalls on qualified mortgages caused by prepayments of those mortgages between scheduled payment dates. Proposed § 1.860G–2(g)(2). In addition, a qualified reserve fund must be promptly and appropriately reduced as the REMIC receives payments on qualified mortgages.

Proposed § 1.860G–2(g)(3)(ii)(A) provides a list of relevant factors to be considered in determining whether the amount of a reserve fund is reasonably required. Proposed § 1.860G–2(g)(3)(ii)(B) creates a presumption that a reserve fund is reasonably required, and is promptly and appropriately reduced, if a nationally recognized independent rating agency requires that a reserve of a specified size be maintained before it provides the rating desired by the REMIC sponsor for the interests that the sponsor intends to offer. A reserve fund also is presumed to be reasonably required and promptly and appropriately reduced if a credit enhancer that is not related to the REMIC dictates the amount of the reserve fund as a condition for guaranteeing or insuring the qualified mortgages or some or all of the regular interests. The above described presumptions can, however, be rebutted if the requirements of a rating agency or credit enhancer concerning the size of a reserve or the speed at which it can be reduced are not based on a reasonable assessment of the credit risk associated with the qualified mortgages and the terms of the interests being rated or guaranteed.

5. Outside reserve funds. Proposed § 1.860G–2(h) provides that the assets of certain reserve funds that are maintained to provide credit support for REMIC interest holders and that are designated in a REMIC's organizational documents as outside reserve funds are not assets of the REMIC. Several requirements must be satisfied if a fund is to be respected as an outside reserve fund. These requirements are intended to ensure that a person other than the REMIC is the true owner of the reserve fund. So long as these requirements are satisfied, a reserve fund will be respected as an outside reserve fund even if it is maintained by the same trustee that holds the REMIC's qualified mortgages and permitted investments.

B. Investors' Interests

For an organization to qualify as a REMIC, all interests in the organization must be designated as either residual interests or regular interests. The REMIC must have a single class of residual interests and may have one or more classes of regular interests. Section 860D(a) (2) and (3). All distributions, if any, with respect to the residual interests must be pro rata. Section 860D(a)(3).

1. Regular interests. A regular interest is one that is designated as a regular interest and that is issued on the startup day with fixed terms. The regular interest must unconditionally entitle the holder to receive a specified principal amount (or other similar amount). Any interest payments (or other similar amounts) at or before maturity must be based either on a fixed rate of interest or (to the extent provided in regulations) a variable rate of interest, or consist of a specified portion of interest payments on the qualified mortgages that does not vary during the period the regular interest is outstanding. Section 860G(a)(1).

For purposes of computing taxable income, both the REMIC and the regular interest holder are treated as though the regular interest were a debt instrument issued by the REMIC regardless of the form of the regular interest under local law. Sections 860B(a) and 860C(b).

TAMRA added the language to section 860G(a)(1) authorizing issuance of regular interests that provide for interest consisting of a specified portion of the interest payments on qualified mortgages. By adding this language, Congress intended to allow REMICs to issue interest only regular interests (IO interests or IO strips). *See* S. Rep. No. 445, 100th Cong., 2d Sess. 81. An IO interest entitles the holder to receive interest payments that are determined by reference to the interest payable on the qualified mortgages rather than by reference to the specified principal amount of the IO interest. To require IO interests to have some minimum specified principal amount would, therefore, serve no purpose. Consequently, proposed § 1.860G–1(a)(2)(iv) provides that the specified principal amount of an IO regular interest can be zero.

Proposed § 1.860G–1(a)(2)(i) defines "specified portion" to mean a right to receive interest payments that can be expressed as (1) a fixed percentage of interest payable on qualified mortgages, or (2) a fixed number of basis points of interest payable on qualified mortgages.

An expanded definition of specified portion beyond the two categories described above could include a right to receive interest payments expressed as all interest payable on qualified mortgages in excess of a fixed number of basis points, or in excess of a qualified variable rate. Under such an expanded definition, a REMIC that held a pool of fixed rate mortgages could, for example, issue as a regular interest a variable IO strip expressed as the excess of the fixed pool rate over the London Interbank Offered Rate (LIBOR). An expanded definition could also include so-called "squeezable" IO strips, under which the right of the interest holder to receive payments may be reduced or eliminated as interest rates change.

In considering an expanded definition of specified portion, however, the Service has recognized that, while some variable IO strips may be taxed appropriately as debt instruments, some more closely resemble options. For example, an IO strip that entitles the holder to receive all interest payments on a pool of variable rate mortgages in excess of the rate currently being paid on those mortgages resembles an interest rate cap. Recently proposed regulations under section 446 generally treat interest rate caps as a series of options and not as debt instruments. Thus, it may be inappropriate to tax an IO strip that closely resembles an interest rate cap as a debt instrument.

The Service welcomes comments with respect to expanding the definition of specified portion to permit some or all variable IO strips. In addition, comments are requested regarding the limitations, if any, that are appropriate with respect to any recommended expanded definition.

Proposed § 1.860G–1(a)(3) defines the universe of authorized variable rates. A rate is a permissible variable rate if it is based on an objective interest index or based on a weighted average interest

rate of some or all of the mortgages held by the REMIC. In addition, an otherwise permissible variable rate is not disqualified because it is subject to periodic or permanent caps or floors. Finally, an interest is considered to bear interest at a qualifying variable rate if it provides for interest at one permissible rate during one or more accrual or payment periods and a different permissible rate or rates for other accrual or payment periods.

The variable rate definition in proposed § 1.860G–1(a)(3) applies solely for purposes of determining whether an interest is a regular interest for purposes of sections 860G(a)(1) and 860D(a)(2). An interest that satisfies the variable rate standards for REMIC qualification is not necessarily a variable rate debt instrument under proposed § 2.1275–5(a) for purposes of applying the OID rules to that instrument.

Proposed § 1.860G–1(b)(5) provides that, unless an interest provides for payments that can be expressed as a specified portion that meets the requirements of proposed § 1.860G–1(a)(2), it will qualify as a regular interest only if the amount of interest payable to the holder of the interest is not disproportionately high relative to its specified principal amount. Interest payments are considered to be disproportionately high for this purpose if the issue price of the interest exceeds 125 percent of its specified principal amount. The purpose of this rule is to ensure that limitations imposed on the creation of IO strips as regular interests are not avoided through use of instruments that have very small principal amounts and call for extremely high rates of interest.

An interest in a REMIC does not fail to qualify as a regular interest solely because the timing, but not the amount, of the principal payments on the regular interest is dependent upon the rate of prepayments on the qualified mortgages or the rate of return earned by the REMIC on permitted investments. Section 860G(a)(1).

Proposed § 1.860G–1(b)(3)(ii) provides that an interest in a REMIC does not fail to qualify as a regular interest solely because the interest holder's entitlement to receive interest and principal on the REMIC interest is dependent on the absence of defaults on the qualified mortgages or permitted investments. Further, proposed § 1.860G–1(b)(3)(iii) expressly allows an interest in a REMIC to qualify as a regular interest even though that interest is, by its terms, subordinate to other regular interests or the residual interest in the event of distribution shortfalls caused by defaults or delinquencies on qualified mortgages, lower than reasonably expected returns on cash flow investments, unanticipated expenses incurred by the REMIC, or interest shortfalls on qualified mortgages caused by prepayment of those mortgages between scheduled payment dates.

Prepayment penalty provisions are typically found in commercial mortgage loans. Proposed § 2.860G–1(b)(2) allows the REMIC to pass through to regular interest holders customary prepayment penalties received when a qualified mortgage prepays.

2. *Residual interests.* A residual interest is one that is issued on the startup day and that is designated as a residual interest. Section 860G(a)(2). These are the only requirements. Although it must be designated as an interest in the REMIC, there is no requirement that a residual interest be entitled to any distributions.

3. *Other rights that are not interests.* Because all interests in a REMIC must be either regular interests or residual interests, and because a REMIC can have only one class of residual interest, determining whether a particular right to receive cash or property from a REMIC is an interest in the REMIC is very important.

Not every right to receive a payment from a REMIC is an interest in the REMIC. While not intended as an exclusive list, proposed § 1.860D–1(b)(2) specifies certain rights that are not interests in the REMIC. For example, rights to receive payment from a REMIC for goods or services rendered in the ordinary operation of the REMIC are not considered an interest in the REMIC. Thus, a mortgage servicer's right to receive reasonable compensation is not an interest in a REMIC. Similarly, a right to be reimbursed for servicer advances or amounts paid under a guarantee is not an interest in the REMIC. Further, a stripped bond or coupon that is not held by the REMIC is not an interest in the REMIC even if the REMIC holds other stripped bonds or coupons arising from the same mortgage obligation.

C. The Arrangements Test

To qualify as a REMIC, an entity must make reasonable arrangements designed to ensure that its residual interests will not be held by a disqualified organization. It must also make reasonable arrangements to ensure that if, in spite of the steps taken to prevent disqualified organizations from holding residual interests, such an organization does in fact acquire a residual interest, the person liable for the tax imposed by section 860E(e)(1) on transfers to disqualified organizations will have the information needed to compute the tax. Section 860D(a)(6).

Included within the definition of the term disqualified organization are the United States, any state or political subdivision thereof, any foreign government, any international organization, and any agency or instrumentality of any of the foregoing. Section 860E(e)(5). In general, disqualified organizations are those organizations that are completely exempt from Federal income tax, including the tax imposed under section 511 on unrelated business taxable income. TAMRA added the arrangements test and the tax on transfers to disqualified organizations to the REMIC provisions to ensure that the excess inclusions allocated to a residual interest would not escape taxation.

Proposed § 1.860D–1(b)(5)(i) provides that an entity is considered to have made reasonable arrangements to prevent disqualified organizations from holding residual interests if (1) the residual interests are issued in registered form, and (2) the entity's organizational documents clearly and expressly prohibit a disqualified organization from acquiring beneficial ownership of a residual interest, and notice of the prohibition is provided to the interest holders in offering documents or on ownership certificates.

Proposed § 1.860D–1(b)(5)(ii) provides that an entity has made reasonable arrangements to ensure that a person liable for the tax on transfers to disqualified organizations receives the information needed to compute the tax if the entity's organizational documents require the entity to provide to the transferor and to the Service a computation showing the present value of the anticipated remaining excess inclusions with respect to the transferred residual interest.

II. Formation of the REMIC

Proposed § 2.860F–2(a)(1) provides that the formation of a REMIC is always viewed as a contribution of assets by the sponsor to the REMIC in exchange for regular and residual interests in the REMIC. Thus, if instead of exchanging its interest in mortgages and related assets (*e.g.*, reserve fund assets) for interests in the REMIC, the sponsor caused the REMIC to issue interests for cash, after which the sponsor sold the mortgages to the REMIC, the transaction would, nevertheless, be viewed as the sponsor's contribution of assets in exchange for REMIC interests. The purpose of this rule is to ensure that the tax consequences associated with the formation of a REMIC are not affected

by the sequence of steps taken by the sponsor.

The term "sponsor" is defined as the person who owns mortgages and related assets immediately before the REMIC is created, and who exchanges that property for all of the regular and residual interests in the REMIC. Proposed § 1.860F–2(b)(1).

The sponsor does not recognize gain or loss upon the transfer of qualified mortgages and related assets to a REMIC in exchange for regular and residual interests. Section 860F(b)(1)(A). Proposed § 1.860F–2(b)(3)(i) provides that the aggregate of the adjusted bases of the regular and residual interests acquired in the exchange equals the aggregate of the adjusted bases of the property contributed to the REMIC plus organizational expenses paid or incurred incident to the formation of the REMIC. That aggregate basis is to be allocated among the regular and residual interests in accordance with their relative fair market values on the pricing date, if any, or, if none on the startup day. Proposed § 1.860F–2(b)(3)(iii) defines pricing date as the date on which the terms of the regular and residual interests are fixed and the prices at which a substantial portion of the regular interests will be sold are fixed.

Proposed § 1.860F–2(b)(3)(ii) defines the term organizational expense to mean one that is paid or incurred incident to the formation of the REMIC, such as legal fees incurred for preparation of a trust indenture. Syndication expenses incurred by the sponsor of a REMIC offering in connection with the sale of REMIC interests are not organizational expenses. Syndication expenses do, however, reduce the amount realized on the sale of interests for purposes of determining the sponsor's gain or loss.

Under section 860G(a)(3)(C), a regular interest in a REMIC can be used to collateralize a second REMIC because regular interests can be qualified mortgages. Proposed § 1.860F–2(a)(2) provides that two or more REMICs can be formed pursuant to a single set of organizational documents even if, for state law purposes or for Federal securities law purposes, only one entity exists.

III. Taxation of the REMIC and the Interest Holders

A. Tax Treatment of the REMIC

Generally, a REMIC is not subject to tax. Although a REMIC computes taxable income or loss, unless the REMIC provisions of the Code specify otherwise, all of a REMIC's income is allocated to the interest holders. Section 860A. An entity level tax is imposed, however, if the REMIC has income from prohibited transactions, if it receives certain contributions after the startup day, or if it has net income from foreclosure property. Section 860F(a), section 860G (c) and (d).

B. Tax Treatment of Regular Interest Holders

Regular interest holders are treated for all Federal income tax purposes as holders of debt instruments issued by the REMIC. Section 860B(a). Regular interest holders must report interest income attributable to their interests using the accrual method of accounting regardless of the method of accounting they might otherwise use. Section 860B(b).

These proposed regulations do not address the tax treatment of regular interests. The Service is developing regulations to interpret section 1272(a)(6) and welcomes comments concerning the application of that section to regular interests.

C. Tax Treatment of the Residual Interest Holders

At the end of each calendar quarter, a residual interest holder must take into account its daily portion of the REMIC's income or loss for each of the days that it held the interest. Section 860C(a)(1). The daily portion of the REMIC's income or loss is to be determined quarterly and allocated ratably among the days in the quarter. All residual interests on any given day share ratably; no special allocations are allowed. Section 860C(a)(2).

Generally, a REMIC determines its taxable income or loss as though it were an individual using the accrual method of accounting. Section 860C(b). Proposed § 1.860C–2 creates several exceptions to this general rule. Thus, a REMIC may deduct interest expense without regard to the net investment income limitations in section 163(d). Proposed § 1.860C–2(b)(2). Any gain or loss realized by a REMIC on the disposition of any asset, including a qualified mortgage or a permitted investment, is ordinary gain or loss. Proposed § 1.860C–2(a). For purposes of computing the bad debt deduction under section 166, all debts held by the REMIC are treated as having been created or acquired in connection with a trade or business. Proposed § 1.860C–2(b)(3). Further, REMICs are subject to the interest expense allocation rules of section 265(b) for financial institutions that hold tax-exempt bonds. Proposed § 1.860C–2(b)(5).

Proposed § 1.860C–2(b)(4) explains that a REMIC is not treated as carrying on a trade or business for purposes of the deduction allowed by section 162. Instead, a REMIC is allowed a deduction under section 212 for its ordinary and necessary expenses without reference to the limitation imposed under section 67(c). Generally, a REMIC must, however, allocate its investment expenses to its residual interest holders so that those holders who are subject to the section 67 limitation are allowed to deduct their share of the expenses only if they satisfy the section 67 threshold. Section 1.67–3T(a).

D. The Excess Inclusion Rules

Generally. A specific portion of the income allocable to a residual interest, referred to as an excess inclusion, is, with an exception for thrift institutions, subject to Federal income taxation in all events. Residual interest holders other than thrift institutions may not offset excess inclusions with otherwise allowable deductions. Section 860E(a). An excess inclusion is treated as unrelated business taxable income (UBTI) if the residual interest holder is an exempt organization that is subject to the tax imposed under section 511 on UBTI. Section 860E(b).

In general, the excess inclusion attributable to a residual interest is the excess of the income actually allocated to the interest under section 860C over the income that would have been allocated to that interest if it had a constant yield from the time of its issuance at a compounded rate equal to 120 percent of the long term AFR.

Specifically, in any calendar quarter, the excess inclusion for a holder is the excess, if any, of the taxable income of the REMIC allocated to that holder under section 860C over the sum of the daily accruals for all the days in the quarter that the holder owned the residual interest. Section 860E(c)(1). The daily accruals are determined by allocating to each day in the calendar quarter its ratable portion of the product of 120 percent of the long term AFR and the adjusted issue price of the residual interest at the beginning of the quarter. The adjusted issue price is the issue price of the residual interest, increased by contributions to the REMIC and daily accruals from prior quarters, and reduced by distributions before the beginning of the quarter. Section 860E(c)(2).

2. Special rule for thrift institutions. Thrift institutions to which section 593 applies are excepted from the general rule that excess inclusions are, in all events, subject to taxation. Thus, a thrift with NOLs can apply those losses to

offset excess inclusions. The Service is given express authority to provide regulations that render this special thrift exception inapplicable where necessary or appropriate to prevent tax avoidance. Section 860E(a)(2).

Proposed § 1.860E–1(a)(3)(i) provides that the exception for thrift institutions applies only if the residual interest has significant value. A residual interest has significant value only if the aggregate of the issue prices of the residual interests in the REMIC is at least two percent of the aggregate of the issue prices of all interests in the REMIC, and only if the anticipated weighted average life of the residual interest is at least 20 percent of the anticipated life of the REMIC. Proposed § 1.860E–1(a)(3)(iii). The weighted average life of the residual interest and the anticipated life of the REMIC are to be determined by reference to the prepayment and reinvestment assumptions made by the sponsor in pricing the REMIC offering.

3. Excess inclusions of certain institutional investors. Section 860E(d) provides that, under regulations, certain institutional residual interest holders, such as REITs, RICs, and common trust funds, are to allocate excess inclusions among their interest holders. The Service has reserved § 1.860E–1(b) and will provide rules in the future concerning the allocation of excess inclusions to interest holders of those organizations.

4. Tax on transfer to disqualified organization. A tax is imposed upon the transfer of a residual interest to a disqualified organization. Section 860E(e). The amount of tax is equal to the sum of the present values of the anticipated excess inclusions attributable to the interest multiplied by the highest corporate rate. Section 860E(e)(2). Proposed § 1.860E–2(a) (3) and (4) explain how to compute the present value of the anticipated excess inclusions. The tax is imposed on the transferor, unless the transfer is through an agent, in which case the tax is imposed on the agent. Section 860E (e)(3).

The person otherwise liable for the tax will be relieved of that liability if it receives an affidavit from the transferee stating that the transferee is not a disqualified organization, provided the transferor does not have actual knowledge that the affidavit is false. Section 860E(e)(4). Proposed § 1.860E–2(a)(7) explains that a transferee is treated as having furnished an affidavit if the transferee furnishes to the transferor (1) a social security number and a statement under penalties of perjury that the number provided is the transferee's social security number, or (2) a statement under penalties of perjury that it is not a disqualified organization.

If a disqualified organization is a record holder of an interest in a pass-thru entity that holds a residual interest, then the transfer tax is imposed on the pass-thru entity. A pass-thru entity is any partnership, trust, estate, RIC, REIT, common trust fund, or subchapter T cooperative. Section 860E(e)(6). No tax is imposed, however, if the record holder furnishes an affidavit or statement under penalties of perjury to the pass-thru entity stating that it is not a disqualified organization, and the pass-thru entity does not have actual knowledge that the affidavit is false. Section 860E(e)(6)(D), § 1.860E–2(b)(2).

5. Noneconomic residuals. To qualify as a residual interest in a REMIC, the interest must be designated as such, and it must be issued on the startup day. Section 860G(a)(2). The residual interest need not be entitled to any distributions. The residual interest holder must, however, include in income the amounts allocated to it under section 860C, and to the extent those amounts represent excess inclusions, they are subject to the rules of section 860E.

If a sponsor creates a REMIC in which the residual interest is not entitled to any distributions, and if it is expected that the REMIC will have taxable income over the course of its life, then that residual interest represents only a future tax liability to the residual interest holder. This is true because the residual interest holder must include in gross income the REMIC's taxable income, and the excess inclusion portion of that taxable income cannot be offset with deductions.

It has been suggested that such interests have a negative basis and a negative issue price. Existing tax rules do not accommodate such concepts. Although the proposed regulations do not address these issues, the Service is interested in comments concerning noneconomic residual interests.

Proposed § 1.860E–1(c)(1) sets forth a rule that is intended to discourage transfers of noneconomic residual interests for the purpose of avoiding the tax on excess inclusions. Under this rule, which does not apply to transfers to foreign persons, the transfer of a noneconomic residual interest is disregarded unless no significant purpose of the transfer was to impede the assessment and collection of tax.

Proposed § 1.860E–1(c)(2) provides that a residual interest is a noneconomic residual interest unless (1) the present value of the expected distributions on the residual interest at least equals the present value of the expected tax on the excess inclusions, and (2) the transferor reasonably expects that the transferee will receive distributions with respect to the residual interest at or after the time the taxes accrue on the anticipated excess inclusions in an amount sufficient to satisfy the accrued taxes.

Section 860G(b)(1) sets out special rules for the tax treatment of foreign persons that hold residual interests. The general rule provides that, unlike other residual interest holders, foreign residual interest holders are to take into account the income attributable to their interests only when they receive distributions or when they dispose of their interests.

If a noneconomic residual were transferred to a foreign holder, then, under the general rule of section 860G(b)(1), the Service might not collect tax on that interest. Proposed § 1.860G–3(a)(2) sets forth an anti-abuse rule that is similar to the general anti-abuse rule described above in that it is intended to discourage the transfer of residual interests to foreign persons for the purpose of avoiding tax on excess inclusions. The rule here provides that the transfer of a residual interest to a foreign transferee is disregarded if the residual interest has tax avoidance potential. A residual interest has tax avoidance potential unless (1) the expected future distributions on the residual interest at least equal 30 percent of the anticipated excess inclusions, and (2) the transferor reasonably expects that sufficient distributions will occur at or after the time the excess inclusions accrue.

IV. REMIC Interests Held by Thrift Institutions and REITS

Regular and residual interests are treated as qualifying real property loans for purposes of sections 593(d)(1) and 7701(a)(19) in the same proportion that the assets of the REMIC would be treated as qualifying real property loans. If, however, at least 95 percent of the assets of the REMIC would be treated as qualifying real property loans, then the entire regular or residual interest is treated as a qualifying real property loan. Sections 593(d)(4) and 7702(a)(29)(C)(xi).

For purposes of the REIT qualification tests, regular and residual interests are treated as real estate assets, and any amount includible in gross income with respect to those interests is treated as interest on an obligation secured by a mortgage on real property. If, however, less than 95 percent of the assets of the REMIC are real estate assets, a REIT interest holder will be treated as holding directly (and as receiving directly) its

proportionate share of the assets and income of the REMIC. Section 856(c)(6)(E).

Proposed §§ 1.593–11(e)(2)(ii) and 1.856–3(b)(2)(ii)(B) provide that for purposes of the REIT and thrift asset tests, cash flow investments are to be treated as qualifying real property loans and real estate assets. This rule is intended to ensure that the status of a REMIC interest as a qualifying asset is not affected by the REMIC's receipt of prepayments.

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 proposed regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these proposed regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal authors of these proposed regulations are Carol A. Schwartz and Laura Ann M. Lauritzen, Office of the Assistant Chief Counsel (Financial Institutions and Products), Internal Revenue Service. However, personnel from other offices of the IRS and Treasury Department participated in the development of the proposed regulations.

List of Subjects

26 CFR 1.591–1 Through 1.1.596–1

Banks, banking, Income taxes, Reporting and recordkeeping requirements.

26 CFR 1.856–0 Through 1.860 5

Income taxes, Investments, Trusts and trustees.

26 CFR 1.860D–1 Through 1.860F–4

Income taxes, Investments, Mortgages, Reporting and recordkeeping requirements.

26 CFR 1.6031–1 Through 1.6060–1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Administrative practice and procedure, Alimony, Bankruptcy, Child support, Continental shelf, Courts, Crime, Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Investigations, Law enforcement, Oil pollution, Penalties, Pensions, Reporting and recordkeeping requirements, Statistics, Taxes.

Proposed Amendments to the Regulations

Accordingly, title 26, parts 1 and 301 of the Code of Federal Regulations are proposed to be amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

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

Authority: Sec. 7805, 68A Stat. 917; 26 U.S.C. 7805 * * * § 1.860D–1 also issued under 26 U.S.C. 860G(e); § 1.860E–1 also issued under 26 U.S.C. 860E and 860G(e); § 1.860E–2 also issued under 26 U.S.C. 860E(e); * * * § 2.860F–2 also issued under 26 U.S.C. 860G(e); § 1.860G–1 also issued under 26 U.S.C. 860G (a)(1)(B) and (e).

Par. 2. Section 1.59–11 is amended by adding a new sentence at the end of paragraph (b)(1) and by adding a new paragraph (e) at the end of the section to read as set forth below.

§ 1.593–11 Qualifying real property loan and nonqualifying loan defined.

* * * * *

(b) * * *

(1) *General rule.* * * * See paragraph (e) of this section for the treatment of a REMIC interest as a qualifying real property loan.

* * * * *

(e) *Treatment of REMIC interests as qualifying real property loans*—(1) *In general.* For purposes of section 593 and §§ 1.593–4 through 1.593–10, if, for any calendar quarter, at least 95 percent of a REMIC's assets (as determined in accordance with § 1.860F–4(e)(1)(ii) or § 1.6049–7(f)(3)) are qualifying real property loans (as defined in paragraph (b) of this section), then, for that calendar quarter, all the regular and residual interests in that REMIC are treated as qualifying real property loans. If less than 95 percent of a REMIC's assets are qualifying real property loans, then a percentage of each regular or residual interest is treated as a qualifying real property loan. The percentage equals the percentage of the REMIC's assets that are qualifying real property loans. See § 1.860F–4(e)(1)(ii)(B) and § 1.6049–7(f)(3) for information required to be provided to regular and residual interest holders if the 95 percent test is not met.

(2) *Treatment of REMIC assets for section 593 purposes*—(i) *Manufactured housing treated as qualifying real property.* For purposes of paragraph (e)(1) of this section, the term *qualifying real property* includes manufactured housing that qualifies as a single family residence under section 25(e)(10).

(ii) *Status of cash flow investments.* For purposes of paragraph (e)(1) of this section, cash flow investments (as defined in section 860G(a)(6) and § 1.860G–2(g)(1)) are treated as qualifying real property loans.

§ 1.856–3 [Amended]

Par. 3. Section 1.856–3 is amended as follows:

1. By designating the text of paragraph (b) as the text of paragraph (b)(1) and adding a heading to read as set forth below.

2. Paragraph (b) is further amended by adding a new paragraph (b)(2) to read as set forth below.

§ 1.856–3 Definitions.

* * * * *

(b) *Real estate assets*—(1) *In general.*

* * *

(2) *Treatment of REMIC interests as real estate assets*—(i) *In general.* If, for any calendar quarter, at least 95 percent of a REMIC's assets (as determined in accordance with § 1.860F–4(e)(1)(ii) or § 1.6049–7(f)(3)) are real estate assets (as defined in paragraph (b)(1) of this section), then, for that calendar quarter, all the regular and residual interests in that REMIC are treated as real estate assets and any amount includible in gross income with respect to those interests is treated as interest on obligations secured by mortgages on real property. If less than 95 percent of a REMIC's assets are real estate assets, then the real estate investment trust is treated as holding directly its proportionate share of the assets and as receiving directly its proportionate share of the income of the REMIC. See § 1.860F–4(e)(1)(ii)(B) and § 1.60497(f)(3) for information required to be provided to regular and residual interest holders if the 95 percent test is not met.

(ii) *Treatment of REMIC assets for section 856 purposes*—(A) *Manufactured housing treated as real estate asset.* For purposes of paragraphs (b) (1) and (2) of this section, the term "real estate asset" includes manufactured housing that qualifies as a single family residence under section 25 (e)(10).

(B) *Status of cash flow investments.* For purposes of paragraph (b)(2) of this section, cash flow investments (as

defined in section 860G(a)(6) and § 2.860G–2(g)(1)) are real estate assets.

(C) *Gross income.* In determining whether a REIT satisfies the limitations of section 856(c)(2), all REMIC gross income is deemed to be derived from a source specified in section 856(c)(2).

Par. 4. New §§ 1.860A–0, 1.860A–1, 1.860C–1 and 1.860C–2 are added as set forth below.

§ 1.860A–0 Outline of REMIC provisions.

This section lists the paragraphs contained in §§ 1.860A–1 through 1.860G–3.

§ 1.860A–1 Effective dates and transition rules.

(a) In general.
(b) Exceptions.
(1) Reporting regulations.
(2) Tax avoidance rules.
(i) In general.
(ii) Residual interests that lack significant value.
(3) Excise taxes.

§ 1.860C–1 Taxation of holders of residual interests.

(a) Pass-thru of income or loss.
(b) Adjustments to basis of residual interests.
(1) Increase in basis.
(2) Decrease in basis.
(3) Adjustments made before disposition.
(c) Counting conventions.

§ 1.860C–2 Determination of REMIC taxable income or net loss.

(a) Treatment of gain or loss.
(b) Deductions allowable to a REMIC.
(1) In general.
(2) Deduction allowable under section 163.
(3) Deduction allowable under section 166.
(4) Deduction allowable under section 212.
(5) Expenses and interest relating to tax-exempt income.

§ 1.860D–1 Definition of a REMIC.

(a) In general.
(b) Specific requirements.
(1) Interests in a REMIC.
(i) In general.
(ii) De minimis interests.
(2) Certain rights not treated as interests.
(i) Payments for services.
(ii) Stripped interests.
(iii) Rights of reimbursement.
(iv) Rights to acquire mortgages.
(3) Asset test.
(i) In general.
(ii) Safe harbor.
(4) Arrangements test.
(5) Reasonable arrangements.
(i) Arrangements to prevent disqualified organizations from holding residual interests.
(ii) Arrangements to ensure that information will be provided.
(6) Calendar year requirement.
(c) Segregated pool of assets.
(1) Formation of REMIC.
(2) Identification of assets.
(3) Qualified entity defined.
(d) Election to be treated as a real estate mortgage investment conduit.
(1) In general.
(2) Information required to be reported in the REMIC's first taxable year.
(3) Requirement to keep sufficient records.

§ 1.860E–1 Treatment of taxable income of a residual interest holder in excess of daily accruals.

(a) Excess inclusion cannot be offset by otherwise allowable deductions.
(1) In general.
(2) Affiliated groups.
(3) Special rule for certain financial institutions.
(i) In general.
(ii) Ordering rule.
(A) In general.
(B) Example.
(iii) Significant value.
(iv) Anticipated weighted average life.
(A) In general.
(B) Anticipated principal payments.
(v) Determination of anticipated weighted average life if the residual interest has no specified principal amount or if interest is disproportionate to principal.
(b) Treatment of a residual interest held by REITs, RICs, common trust funds and subchapter T cooperatives.
(c) Transfers of noneconomic residual interests.
(1) In general.
(2) Noneconomic residual.
(3) Computations.
(d) Transfers to foreign persons.

§ 1.860E–2 Tax on transfers of residual interest to certain organizations.

(a) Transfers to disqualified organizations.
(1) Payment of tax.
(2) Transitory ownership.
(3) Present value computation.
(4) Anticipated excess inclusions.
(5) Obligation of REMIC to furnish information.
(6) Agent.
(7) Relief from liability.
(i) Transferee furnishes information under penalties of perjury.
(ii) Amount required to be paid.
(b) Tax on pass-thru entities.
(1) Tax on excess inclusions.
(2) Record holder furnishes information under penalties of perjury.
(3) Deductibility of tax.

§ 1.860F–1 Qualified liquidations.

§ 1.860F–2 Transfers to a REMIC.

(a) Formation of a REMIC.
(1) In general.
(2) REMICs formed in a single document.
(b) Treatment of sponsor.
(1) Sponsor defined.
(2) Nonrecognition of gain or loss.
(3) Basis of contributed assets allocated among interests.
(i) In general.
(ii) Organizational expenses.
(A) Organizational expense defined.
(B) Syndication expenses.
(iii) Pricing date.
(4) Treatment of unrecognized gain or loss.
(i) Unrecognized gain on regular interests.
(ii) Unrecognized loss on regular interests.
(iii) Unrecognized gain on residual interests.
(iv) Unrecognized loss on residual interests.
(5) Anticipated life of the REMIC.
(6) Additions to or reduction of the sponsor's basis.
(7) Transferred basis property.
(c) REMIC's basis in contributed assets.

§ 1.860F–4 REMIC reporting requirements and other administrative rules.

(a) In general.
(b) REMIC tax return.
(1) In general.
(2) Income tax return.
(c) Signing of REMIC return.
(1) In general.
(2) REMIC whose startup day is before November 10, 1988.
(i) In general.
(ii) Startup day.
(iii) Exception.
(d) Designation of tax matters person.
(e) Notice to holders of residual interests.
(1) Information required.
(i) In general.
(ii) Information with respect to REMIC assets.
(A) 95 percent asset test.
(B) Additional information required if the 95 percent test not met.
(C) For calendar quarters in 1987.
(D) For calendar quarters in 1988 and 1989.
(iii) Special provisions.
(2) Quarterly notice required.
(i) In general.
(ii) Special rule for 1987.
(3) Nominee reporting.
(i) In general.
(ii) Time for furnishing statement.
(4) Reports to the Internal Revenue Service.

§ 1.860G–1 Definition of regular and residual interests.

(a) Regular interest.
(1) Designation as a regular interest.
(2) Specified portion of the interest payments on qualified mortgages.
(i) In general.
(ii) Specified portion cannot vary.
(iii) Defaulted or delinquent mortgages.
(iv) No minimum specified principal amount is required.
(v) Examples.
(3) Variable rate.
(i) Rate based on current values.
(ii) Weighted average rate.
(A) In general.
(B) Reduction in underlying rate.
(iii) Additions, subtractions, and multiplications.
(iv) Caps and floors.
(v) Combination of rates.
(4) Fixed terms on the startup day.
(5) Contingencies prohibited.
(b) Special rules for regular interests.
(1) Call premium.
(2) Pass through of customary prepayment penalties.
(3) Certain contingencies disregarded.
(i) Prepayments, income and expenses.
(ii) Credit losses.
(iii) Subordinated interests.
(iv) Deferral of interest.
(v) Prepayment interest shortfalls.
(4) Form of regular interest.
(5) Interest disproportionate to principal.

§ 1.860A–1 Effective dates and transition rules.

(a) *In general.* Except as otherwise provided in paragraph (b) of this section, the regulations under sections 860A through 860G are effective only for a qualified entity (as defined in § 1.860D–1(c)(3)) whose startup day (as defined in section 860G(a)(9) and § 1.860G–2(j)) is on or after November 12, 1991.

(b) *Exceptions*—(1) *Reporting regulations.* (Reserved)

(2) *Tax avoidance rules*—(i) *In general.* Section 1.860E–1(c) (concerning transfers of noneconomic residual interests), and § 1.860G–3(a) (concerning transfers of residual interests to foreign holders) are effective for transfers of residual interests on or after November 12, 1991.

(ii) *Residual interests that lack significant value.* The significant value requirement in § 1.860E–1(a)(3) (concerning excess inclusions accruing to organizations to which section 593 applies) generally is effective for residual interests acquired on or after November 12, 1991. The significant value requirement in § 1.860E–1(a)(3) does not apply, however, to residual interests acquired by a sponsor at formation of a REMIC in a transaction described in § 1.860F–2(a)(1) if more than 50 percent of the interests in the REMIC (determined by reference to issue price) are sold to unrelated investors before November 12, 1991.

(3) *Excise taxes.* Section 1.860E–2(a)(1) is effective for transfers of residual interests to disqualified organizations after March 31, 1988. Section 1.860E–2(b)(1) is effective for excess inclusions accruing to pass-thru entities after March 31, 1988.

§ 1.860C–1 Taxation of holders of residual interests.

(a) *Pass-thru of income or loss.* Any holder of a residual interest in a REMIC must take into account the holder's daily portion of the taxable income or net loss of the REMIC for each day during the taxable year on which the holder owned the residual interest. See section 860C(a)(2) for the meaning of the term *daily portion* and § 1.469–2T(c)(3)(i)(A) for the treatment of REMIC taxable income as portfolio income.

(b) *Adjustments to basis of residual interests*—(1) *Increase in basis.* A holder's basis in a residual interest is increased by—

(i) The daily portions of taxable income taken into account by that holder under section 860C(a) with respect to that interest, and

(ii) The amount of any contribution described in section 860G(d)(2) made by that holder.

(2) *Decrease in basis.* A holder's basis in a residual interest is reduced (but not below zero) by—

(i) First, the amount of any cash or the fair market value of any property distributed to that holder with respect to that interest, and

(ii) Second, the daily portions of net loss of the REMIC taken into account under section 860C(a) by that holder with respect to that interest.

(3) *Adjustments made before disposition.* If any person disposes of a residual interest, the adjustments to basis prescribed in paragraphs (b) (1) and (2) are deemed to occur immediately before the disposition.

(c) *Counting conventions.* For purposes of determining the daily portion of REMIC taxable income or net loss under section 860C(a)(2), any reasonable convention may be used. An example of a reasonable convention is "30 days per month/90 days per quarter/360 days per year."

§ 1.860C–2 Determination of REMIC taxable income or net loss.

(a) *Treatment of gain or loss.* For purposes of determining the taxable income or net loss of a REMIC under section 860C(b), any gain or loss from the disposition of any asset, including a qualified mortgage (as defined in section 860G(a)(3)) or a permitted investment (as defined in section 860G(a)(5) and § 1.860G–2(g)), is treated as gain or loss from the sale or exchange of property that is not a capital asset.

(b) *Deductions allowable to a REMIC*—(1) *In general.* Except as otherwise provided in section 860C(b) and in paragraphs (b) (2) through (5) of this section, the deductions allowable to a REMIC for purposes of determining its taxable income or net loss are those deductions that would be allowable to an individual, determined by taking into account the same limitations that apply to an individual.

(2) *Deduction allowable under section 163.* A REMIC is allowed a deduction, determined without regard to section 163(d), for any interest expense accrued during the taxable year.

(3) *Deduction allowable under section 166.* For purposes of determining a REMIC's bad debt deduction under section 166, debt owed to the REMIC is not treated as nonbusiness debt under section 166(d).

(4) *Deduction allowable under section 212.* A REMIC is not treated as carrying on a trade or business for purposes of section 162. Ordinary and necessary

operating expenses paid or incurred by the REMIC during the taxable year are deductible under section 212, without regard to section 67. See § 1.67–3T for special rules regarding the allocation of these expenses among REMIC interest holders. Any expenses that are incurred in connection with the formation of the REMIC and that relate to the organization of the REMIC and the issuance of regular and residual interests are not treated as expenses of the REMIC for which a deduction is allowable under section 212. See § 1.860F–2(b)(3)(ii) for treatment of those expenses.

(5) *Expenses and interest relating to tax-exempt income.* Pursuant to section 265(a), a REMIC is not allowed a deduction for expenses and interest allocable to tax-exempt income. The portion of a REMIC's interest expense that is allocable to tax-exempt interest is determined in the manner prescribed in section 265(b)(2), without regard to section 265(b)(3).

Par. 5. Section 1.860D–1, as proposed on September 7, 1989 (54 FR 37,125), is amended by revising paragraphs (a), (b), and (c)(2) to read as follows:

§ 1.860D–1 Definition of a REMIC.

(a) *In general.* A real estate mortgage investment conduit (or REMIC) is a qualified entity, as defined in paragraph (c)(3) of this section, that satisfies the requirements of section 860D(a). See paragraph (d)(1) of this section for the manner of electing REMIC status.

(b) *Specific requirements*—(1) *Interests in a REMIC*—(i) *In general.* Except as provided in paragraph (b)(1)(ii) of this section, every interest in a REMIC must be either a regular interest (as defined in section 860G(a)(1) and § 1.860G–1(a)) or a residual interest (as defined in section 860G(a)(2) and § 1.860G–1(c)). A REMIC must have one (and only one) class of residual interests.

(ii) *De minimis interests.* If, to facilitate the creation of an entity that elects REMIC status, an interest in the entity is created and, as of the startup day (as defined in section 860G(a)(9) and § 1.860G–2(j)), the fair market value of that interest is less than the lesser of $1,000 or 1/1,000 of one percent of the aggregate fair market value of all the regular and residual interests in the REMIC, the interest is not treated as an interest in the REMIC for purposes of section 860D(a) (2) and (3) and paragraph (b)(1)(i) of this section.

(2) *Certain rights not treated as interests.* Certain rights are not treated as interests in a REMIC. Although not an exclusive list, the following rights are not interests in a REMIC.

(i) *Payments for services.* The right to receive from the REMIC payments that represent reasonable compensation for services provided to the REMIC in the ordinary course of its operation is not an interest in the REMIC. Payments made by the REMIC in exchange for services may be expressed as a specified percentage of interest payments due on qualified mortgages or earnings from permitted investments. For example, a mortgage servicer's right to receive reasonable compensation for servicing the mortgages owned by the REMIC is not an interest in the REMIC.

(ii) *Stripped interests.* Stripped bonds or stripped coupons not held by the REMIC are not interests in the REMIC even if, in a transaction preceding or contemporaneous with the formation of the REMIC, they were created from the same mortgage obligation as the REMIC's qualified mortgages. The right of a mortgage servicer to retain a servicing fee in excess of reasonable compensation from payments it receives on mortgages held by a REMIC is not an interest in the REMIC.

(iii) *Rights of reimbursement.* A right of reimbursement against a REMIC arising from a credit enhancement contract (as defined in § 1.860G–2(c)(2)) is not an interest in the REMIC.

(iv) *Rights to acquire mortgages.* The right to acquire or the obligation to purchase mortgages and other assets from a REMIC pursuant to a clean-up call (as defined in § 1.860G–2(i)), or a qualified liquidation (as defined in section 860F(a)(4)), or on conversion of a convertible mortgage (as defined in § 1.860G–2(d)(4)), is not an interest in the REMIC.

(3) *Asset test*—(i) *In general.* For purposes of the asset test of section 860D(a)(4), substantially all of a qualified entity's assets are qualified mortgages and permitted investments if the qualified entity owns no more than a de minimis amount of other assets.

(ii) *Safe harbor.* The amount of assets other than qualified mortgages and permitted investments is de minimis if the aggregate of the adjusted bases of those assets is less than one percent of the aggregate of the adjusted bases of all of the REMIC's assets. Nonetheless, a qualified entity that does not meet this safe harbor may demonstrate that it owns no more than a de minimis amount of other assets.

(4) *Arrangements test.* Generally, a qualified entity must adopt reasonable arrangements designed to ensure that—

(i) Disqualified organizations (as defined in section 860E(e)(5)) do not hold residual interests in the qualified entity, and

(ii) If a residual interest is acquired by a disqualified organization, the qualified entity will provide to the Internal Revenue Service, and to the persons specified in section 860E(e) (3) and (6), information needed to compute the tax imposed under section 860E(e) on transfers of residual interests to disqualified organizations.

(5) *Reasonable arrangements*—(i) *Arrangements to prevent disqualified organizations from holding residual interests.* A qualified entity is considered to have adopted reasonable arrangements to ensure that a disqualified organization (as defined in section 860E(e)(5)) will not hold a residual interest if—

(A) The residual interest is in registered form (as defined in § 5f.103–1(c) of this chapter), and

(B) The qualified entity's organizational documents clearly and expressly prohibit a disqualified organization from acquiring beneficial ownership of a residual interest, and notice of the prohibition is provided through a legend on the document that evidences ownership of the residual interest or through a conspicuous statement in a prospectus or private offering document used to offer the residual interest for sale.

(ii) *Arrangements to ensure that information will be provided.* A qualified entity is considered to have made reasonable arrangements to ensure that the Internal Revenue Service and persons specified in section 860E(e) (3) and (6) as liable for the tax imposed under section 860E(e) receive the information needed to compute the tax if the qualified entity's organizational documents require that it provide to the Internal Revenue Service and those persons a computation showing the present value of the total anticipated excess inclusions with respect to the residual interest for periods after the transfer. See § 1.860E–2(a)(5) for the obligation to furnish information on request.

(6) *Calendar year requirement.* A REMIC's taxable year is the calendar year. The first taxable year of a REMIC begins on the startup day (as defined in section 860G(a)(9) and § 1.860G–2(j)) and ends on December 31 of the same year. If the startup day is other than January 1, the REMIC has a short first taxable year.

(c) * * *

(2) *Identification of assets.* Formation of the REMIC does not occur until—

(i) The sponsor identifies the assets of the REMIC, such as through execution of an indenture with respect to the assets, and

(ii) The REMIC issues the regular and residual interests in the REMIC.

* * * * *

Par. 6. New §§ 1.860E–1, 1.860E–2, 1.860F–1, and 1.860F–2 are added as set forth below.

§ 1.860E–1 Treatment of taxable income of a residual interest holder in excess of daily accruals.

(a) *Excess inclusion cannot be offset by otherwise allowable deductions*—(1) *In general.* Except as provided in paragraph (a)(3) of this section, the taxable income of any holder of a residual interest for any taxable year is in no event less than the sum of the excess inclusions attributable to that holder's residual interests for that taxable year. In computing the amount of a net operating loss (as defined in section 172(c)) or the amount of any net operating loss carryover (as defined in section 172(b)(2)), the amount of any excess inclusion is not included in gross income or taxable income. Thus, for example, if a residual interest holder has $100 of gross income, $25 of which is an excess inclusion, and $90 of business deductions, the holder has taxable income of $25, the amount of the excess inclusion, and a net operating loss of $15 ($75 of other income −$90 of business deductions).

(2) *Affiliated groups.* If a holder of a REMIC residual interest is a member of an affiliated group filing a consolidated income tax return, the taxable income of the affiliated group cannot be less than the sum of the excess inclusions attributable to all residual interests held by members of the affiliated group.

(3) *Special rule for certain financial institutions*—(i) *In general.* If an organization to which section 593 applies holds a residual interest that has significant value (as defined in paragraph (a)(3)(iii) of this section), section 860E(a)(1) and paragraph (a)(1) of this section do not apply to that organization with respect to that interest. Consequently, an organization to which section 593 applies may use its allowable deductions to offset an excess inclusion attributable to a residual interest that has significant value, but, except as provided in section 860E(a)(4)(A), may not use its allowable deductions to offset an excess inclusion attributable to a residual interest held by any other member of an affiliated group, if any, of which the organization is a member. Further, a net operating loss of any other member of an affiliated group of which the organization is a member may not be used to offset an excess inclusion attributable to a residual interest held by that organization.

(ii) *Ordering rule*—(A) *In general.* In computing taxable income for any year, an organization to which section 593 applies is treated as having applied its allowable deductions for the year first to offset that portion of its gross income that is not an excess inclusion and then to offset that portion of its income that is an excess inclusion.

(B) *Example.* The following example illustrates the provisions of paragraph (a)(3)(ii) of this section:

Example. Corp. X, a corporation to which section 593 applies, is a member of an affiliated group that files a consolidated return. For a particular taxable year, Corp. X has gross income of $1,000, and of this amount, $150 is an excess inclusion attributable to a residual interest that has significant value. Corp. X has $975 of allowable deductions for the taxable year. Corp. X must apply its allowable deductions first to offset the $850 of gross income that is not an excess inclusion, and then to offset the portion of its gross income that is an excess inclusion. Thus, Corp. X has $25 of taxable income ($1,000 −$975), and that $25 is an excess inclusion that may not be offset by losses sustained by other members of the affiliated group.

(iii) *Significant value.* A residual interest has significant value if—

(A) The aggregate of the issue prices of the residual interests in the REMIC is at least 2 percent of the aggregate of the issue prices of all residual and regular interests in the REMIC, and

(B) The anticipated weighted average life of the residual interests is at least 20 percent of the anticipated life of the REMIC (as determined in § 1.860F–2(b)(5)).

(iv) *Anticipated weighted average life*—(A) *In general.* Generally, the anticipated weighted average life of a residual interest is determined by—

(*1*) Multiplying the amount of each anticipated principal payment to be made on the interest by the number of years (including fractions thereof) from the startup day (as defined in section 860G(a)(9) and § 1.860G–2(j)) to the related principal payment date,

(*2*) Adding the results, and

(*3*) Dividing the sum by the total principal paid on the residual interest.

(B) *Anticipated principal payments.* The anticipated principal payments to be made on a residual interest must be determined based on the prepayment and reinvestment assumptions that are used in determining the anticipated life of the REMIC.

(v) *Determination of anticipated weighted average life if the residual interest has no specified principal amount or if interest is disproportionate to principal.* If a residual interest has no specified principal amount, or if the interest payments to be made on the residual interest are disproportionately high relative to the specified principal amount (as determined by reference to § 1.860G–1(b)(5)(i)), then, for purposes of computing the anticipated weighted average life of the interest, all anticipated distributions on that interest must be taken into account. For example, if the terms of a residual interest do not provide a specified principal amount but provide that the residual interest holder is to receive all cash flows on the qualified mortgages in excess of amounts needed to make payments on the regular interests, then all amounts that are expected to be paid to the residual interest holder must be taken into account in determining the anticipated weighted average life of that interest.

(b) *Treatment of residual interests held by REITs, RICs. common trust funds, and subchapter T cooperatives.* [Reserved]

(c) *Transfers of noneconomic residual interests*—(1) *In general.* A transfer of a noneconomic residual interest is disregarded for all Federal tax purposes unless no significant purpose of the transfer was to impede the assessment or collection of tax.

(2) *Noneconomic residual interest.* A residual interest is a noneconomic residual interest unless, at the time of the transfer—

(i) The present value of the expected future distributions on the residual interest at least equals the product of the present value of the anticipated excess inclusions (as defined in § 1.860E–2(a)(4)) and the highest rate of tax specified in section 11(b)(1) for the year in which the transfer occurs, and

(ii) The transferor reasonably expects that the transferee will receive distributions from the REMIC at or after the time at which the taxes accrue on the anticipated excess inclusions in an amount sufficient to satisfy the accrued taxes.

(3) *Computations.* The present value of the expected future distributions and the present value of the anticipated excess inclusions must be computed under the procedure specified in § 1.860E–2(a)(4) for determining the present value of anticipated excess inclusions in connection with the transfer of a residual interest to a disqualified organization.

(d) *Transfers to foreign persons.* Paragraph (c) of this section does not apply to transfers of residual interests to foreign persons. See § 1.860G–3(a) for the treatment of transfers of residual interests to those persons.

§ 1.860E–2 Tax on transfers of residual interests to certain organizations.

(a) *Transfers to disqualified organizations*—(1) *Payment of tax.* Any excise tax due under section 860E(e)(1) must be paid by the later of [Insert date that is 90 days after this document is published in the **Federal Register** as a final regulation], or April 15th of the year following the calendar year in which the residual interest is transferred to a disqualified organization. The Commissioner may prescribe rules for the manner and method of collecting the tax.

(2) *Transitory ownership.* For purposes of section 860E(e) and this section, a transfer of a residual interest to a disqualified organization will be disregarded if, in connection with the formation of a REMIC, the disqualified organization has a binding contract to sell the interest and the sale occurs within 7 days of the startup day (as defined in section 860G(a)(9) and § 1.860G–2(j)).

(3) *Present value computation.* For purposes of computing the tax imposed by section 860E(e), the present value of the anticipated excess inclusions is determined—

(i) By discounting those excess inclusions from the end of each remaining calendar quarter, or portion thereof, to the date the disqualified organization acquires the residual interest, and

(ii) By using the applicable Federal rate (as specified in section 1274(d)(1)) for

(A) The month in which the disqualified organization acquired the residual interest, and

(B) An obligation with a term beginning on the date the disqualified organization acquired the residual interest and ending on the date the life of the REMIC, as determined under § 1.860F–2(b)(5), is anticipated to expire.

(4) *Anticipated excess inclusions.* The anticipated excess inclusions are the excess inclusions that are anticipated to be allocated to each calendar quarter (or portion thereof) following the transfer of the residual interest. The anticipated excess inclusions must be determined as of the date the residual interest is transferred and must be based on events that have occurred up to the time of the transfer and the prepayment and reinvestment assumptions adopted under section 1272(a)(6) or that would have been adopted had the regular interests of the REMIC been issued with original issue discount.

(5) *Obligation of REMIC to furnish information.* Upon request of the persons designated in section 860E(e)(3), the REMIC must furnish information sufficient to compute the present value of the anticipated excess inclusions. The information must be furnished to the requesting party and to the Internal Revenue Service within 60 days of the request. A reasonable fee charged to the requestor is not income derived from a prohibited transaction within the meaning of section 860F(a).

(6) *Agent.* For purposes of section 860E(e)(3), the term *agent* includes a broker (as defined in section 6045(c) and § 1.6045–1(a)(1)), nominee, or other middleman.

(7) *Relief from liability*—(i) *Transferee furnishes information under penalties of perjury.* For purposes of section 860E(e)(4), a transferee is treated as having furnished an affidavit if the transferee furnishes—

(A) A social security number, and states under penalties of perjury that the social security number is that of the transferee, or

(B) A statement under penalties of perjury that it is not a disqualified organization.

(ii) *Amount required to be paid.* The amount required to be paid in section 860E(e)(7)(B) is equal to the product of the highest rate specified in section 11(b)(1) for that taxable year and the amount of excess inclusions that accrued and were allocable to the residual interest during the period that the disqualified organization held the interest.

(b) *Tax on pass-thru entities*—(1) *Tax on excess inclusions.* Any tax due under section 860E(e)(6) must be paid by the later of [Insert date that is 90 days after date this document is published in the **Federal Register** as a final regulation], or by the fifteenth day of the fourth month following the close of the taxable year of the pass-thru entity in which the disqualified person is a record holder. The Commissioner may prescribe rules for the manner and method of collecting the tax.

(2) *Record holder furnishes information under penalties of perjury.* For purposes of section 860E(e)(6)(D), a record holder is treated as having furnished an affidavit if the record holder furnishes—

(i) A social security number and states, under penalties of perjury, that the social security number is that of the record holder, or

(ii) A statement under penalties of perjury that it is not a disqualified organization.

(3) *Deductibility of tax.* Any tax imposed on a pass-thru entity pursuant to section 860E(e)(6)(A) is deductible against the gross amount of ordinary income of the pass-thru entity. For example, in the case of a real estate investment trust, the tax is deductible in determining real estate investment trust taxable income under section 857(b)(2).

§ 1.860F–1 Qualified liquidations.

A REMIC is considered to adopt a plan of complete liquidation pursuant to section 860F(a)(4) when the plan is signed by a person who is authorized under § 1.860F–4(c) to sign the REMIC's income tax return.

§ 1.860F–2 Transfers to a REMIC.

(a) *Formation of a REMIC*—(1) *In general.* For Federal income tax purposes, a REMIC formation is characterized as the contribution of assets by a sponsor (as defined in paragraph (b)(1) of this section) to a REMIC in exchange for REMIC regular and residual interests. If, instead of exchanging its interest in mortgages and related assets for regular and residual interests, the sponsor arranges to have the REMIC issue some or all of the regular and residual interests for cash, after which the sponsor sells its interests in mortgages and related assets to the REMIC, the transaction is, nevertheless, viewed for Federal income tax purposes as the sponsor's exchange of mortgages and related assets for regular and residual interests, followed by a sale of some or all of those interests. The purpose of this rule is to ensure that the tax consequences associated with the formation of a REMIC are not affected by the actual sequence of steps taken by the sponsor.

(2) *REMICs formed in a single document.* Two or more REMICs may be created pursuant to a single set of organizational documents even if, for State law purposes or for Federal securities law purposes, those documents create only one organization. The organizational documents must, however, clearly and expressly identify the assets of, and the interests in, each REMIC, and each REMIC must satisfy all of the requirements of section 860D and the related regulations.

(b) *Treatment of sponsor*—(1) *Sponsor defined.* A sponsor is a person who directly or indirectly exchanges qualified mortgages and related assets for regular and residual interests in a REMIC. A person indirectly exchanges interests in qualified mortgages and related assets for regular and residual interests in a REMIC if the person transfers, other than in a nonrecognition transaction, the mortgages and related assets to another person who acquires a transitory ownership interest in those assets before exchanging them for interests in the REMIC, after which the transitory owner then transfers some or

all of the interests in the REMIC to the first person.

(2) *Nonrecognition of gain or loss.* The sponsor does not recognize gain or loss on the direct or indirect transfer of any property to a REMIC in exchange for regular or residual interests in the REMIC. However, the sponsor, upon a subsequent sale of the REMIC regular or residual interests, may recognize gain or loss with respect to those interests.

(3) *Basis of contributed assets allocated among interests*—(i) *In general.* The aggregate of the adjusted bases of the regular and residual interests received by the sponsor in the exchange described in paragraph (a) of this section is equal to the aggregate of the adjusted bases of the property transferred by the sponsor in the exchange, increased by the amount of organizational expenses (as described in paragraph (b)(3)(ii) of this section). That total is allocated among all the interests received in proportion to their fair market values on the pricing date (as defined in paragraph (b)(3)(iii) of this section) if any, or, if none, the startup day (as defined in section 860G(a)(9) and § 1.860G–2(j)).

(ii) *Organizational expenses*—(A) *Organizational expense defined.* An organizational expense is an expense that is incurred by the sponsor or by the REMIC and that is directly related to the creation of the REMIC. Further, the organizational expense must be incurred during a period beginning a reasonable time before the startup day (as defined in section 860G(a)(9) and § 1.860G–2(j)) and ending before the date prescribed by law for filing the first REMIC tax return (determined without regard to any extensions of time to file). The following are examples of organizational expenses: legal fees for services related to the formation of the REMIC, such as preparation of a pooling and servicing agreement and trust indenture; accounting fees related to the formation of the REMIC; and other administrative costs related to the formation of the REMIC.

(B) *Syndication expenses.* Syndication expenses are not organizational expenses. Syndication expenses are those expenses incurred by the sponsor or other person to market the interests in a REMIC, and, thus, are applied to reduce the amount realized on the sale of the interests. Examples of syndication expenses are brokerage fees, registration fees, fees of an underwriter or placement agent, and printing costs of the prospectus or placement memorandum and other selling or promotional material.

(iii) *Pricing date.* The term *pricing date* means the date on which the terms of the regular and residual interests are fixed and the prices at which a substantial portion of the regular interests will be sold are fixed.

(4) *Treatment of unrecognized gain or loss*—(i) *Unrecognized gain on regular interests.* For purposes of section 860F(b)(1)(C)(i), the sponsor must include in gross income the excess of the issue price of a regular interest over the sponsor's basis in the interest as if the excess were market discount (as defined in section 1278(a)(2)) on a bond and the sponsor had made an election under section 1278(b) to include this market discount currently in gross income. The sponsor is not, however, by reason of this paragraph, deemed to have made an election under section 1278(b) with respect to any other bonds.

(ii) *Unrecognized loss on regular interests.* For purposes of section 860F(b)(D)(i), the sponsor is allowed to treat the excess of the sponsor's basis in a regular interest over the issue price of the interest as if that excess were amortizable bond premium (as defined in section 171(b)) on a taxable bond and the sponsor had made an election under section 171(c). The sponsor is not, however, by reason of this paragraph, deemed to have made an election under section 171(c) with respect to any other bonds.

(iii) *Unrecognized gain on residual interests.* For purposes of section 860F(b)(1)(C)(ii), the sponsor must include in gross income the excess of the issue price of a residual interest over the sponsor's basis in the interest ratably over the anticipated life of the REMIC.

(iv) *Unrecognized loss on residual interests.* For purposes of section 860F(b)(1)(D)(ii), the sponsor is allowed to deduct the excess of the sponsor's basis in a residual interest over the issue price of the interest ratably over the anticipated life of the REMIC.

(5) *Anticipated life of the REMIC.* The anticipated life of a REMIC is the period of time that the REMIC is expected to be in existence based on the prepayment and reinvestment assumptions adopted under section 1272 (a)(6), or that would have been adopted had the regular interests of the REMIC been issued with original issue discount.

(6) *Additions to or reductions of the sponsor's basis.* The sponsor's basis in a regular or residual interest is increased by any amount included in the sponsor's gross income under paragraph (b)(4) of this section. The sponsor's basis in a regular or residual interest is decreased by any amount allowed as a deduction and by any amount applied to reduce interest payments to the sponsor under paragraph (b)(4) of this section.

(7) *Transferred basis property.* For purposes of paragraph (b)(4) of this section, a transferee of a regular or residual interest is treated in the same manner as the sponsor if the basis of the transferee in the interest is determined in whole or in part by reference to the basis of the interest in the hands of the sponsor.

(c) *REMIC's basis in contributed assets.* For purposes of section 860F(b)(2), the aggregate of the REMIC's bases in the assets contributed by the sponsor to the REMIC in a transaction described in paragraph (a) of this section is equal to the aggregate of the issue prices (determined under section 860G(a)(10) and § 1.860G–1(d)) of all regular and residual interests in the REMIC.

Par. 7. New §§ 1.860G–1 through 1.860G–3 are added as set forth below.

§ 1.860G–1 Definition of regular and residual interests.

(a) *Regular interest*—(1) *Designation as a regular interest.* For purposes of section 860G (a)(1), a REMIC designates an interest as a regular interest by providing to the Internal Revenue Service the information specified in § 1.860D–1(d)(2)(ii) in the time and manner specified in § 1.860D–1(d)(2).

(2) *Specified portion of the interest payments on qualified mortgages*—(i) *In general.* For purposes of section 860G(a)(1)(B)(ii), a specified portion of the interest payments on qualified mortgages means a portion of the interest payable on qualified mortgages, but only if the portion can be expressed as:

(A) A fixed percentage of the interest payable on some or all of the qualified mortgages; or

(B) A fixed number of basis points of the interest payable on some or all of the qualified mortgages.

(ii) *Specified portion cannot vary.* The portion must be established as of the startup day (as defined in section 860G(a)(9) and § 1.860G–2(j)) and, except as provided in paragraph (a)(2)(iii) of this section, it cannot vary over the period that begins on the startup day and ends on the day that the interest holder is no longer entitled to receive payments.

(iii) *Defaulted or delinquent mortgages.* A portion is not treated as varying over time if an interest holder's entitlement to a portion of the interest on some or all of the qualified mortgages is dependent on the absence of defaults or delinquencies on those mortgages.

(iv) *No minimum specified principal amount is required.* If an interest in a REMIC consists of a specified portion of

the interest payments on the REMIC's qualified mortgages, no minimum specified principal amount need be assigned to that interest. The specified principal amount can be zero.

(v) *Examples.* The following examples, each of which describes a pass-thru trust that is intended to qualify as a REMIC, illustrate the provisions of paragraph (a)(2) of this section.

Example 1. (i) A sponsor transferred a pool of fixed rate mortgages to a trustee in exchange for two classes of certificates. The Class A certificates entitle the holders to 90 percent of all principal payments on the pooled mortgages and 85 percent of all interest payments on those mortgages. The Class B certificates entitle the holders to 10 percent of the principal payments on the pooled mortgages and 15 percent of the interest payments on those mortgages. The Class B certificates are subordinate to the Class A certificates so that cash flow shortfalls due to defaults or delinquencies on the pooled mortgages will be borne first by the Class B certificate holders.

(ii) Both the Class A certificates and the Class B certificates provide for interest payments that consist of a specified portion of the interest payable on the pooled mortgages. Each class is entitled to a fixed percentage of the interest payments on each of the pooled mortgages, and, in the absence of defaults or delinquencies, that fixed percentage will remain constant as long as the interest holders are entitled to receive payments.

Example 2. The facts here are the same as those in *Example 1*, except that the pooled mortgages bear interest at a variable rate determined by reference to an objective interest index. The result is the same here. Although the rate at which interest is payable to the certificate holders, will vary as the index fluctuates, the certificate holders proportionate shares of the interest payable on the pooled mortgages is fixed on the startup day and does not vary. Thus, both classes of certificates provide for interest that consists of a specified portion of the interest payable on the pooled mortgages.

Example 3. (i) A sponsor transferred a pool of fixed rate mortgages to a trustee in exchange for two classes of certificates. The fixed interest rate payable on the mortgages varies from mortgage to mortgage, but all rates are between 8 and 10 percent. The Class C certificates entitle the holders to receive all principal on the mortgages and interest at 7 percent on each of the mortgages. The Class D certificates entitle the holders to receive all interest on the mortgages that is not payable to the Class C holders.

(ii) Both the Class C certificates and the Class D certificates provide for interest payments that consist of a specified portion of the interest payable on the mortgages. Although the portion of the interest payable to the two classes of certificate holders varies from mortgage to mortgage, the interest payable to each class can be expressed as a fixed percentage of the interest payable on each particular mortgage.

(3) *Variable rate.* A regular interest may bear interest at a variable rate. For purposes of section 860G(a)(1)(B)(i) and paragraph (a)(1) of this section, a variable rate of interest is a rate described in paragraphs (a)(3) (i) through (v) of this section.

(i) *Rate based on current values.* A rate based on current values (as defined in § 1.1275–5(c)(1), as proposed April 8, 1986 (51 FR 12094)), of an objective interest index (as defined in § 1.1275–5(b), as proposed April 8, 1986 (51 FR 12094)), is a variable rate. In addition, for purposes of this section, the average cost of funds of one or more financial institutions is an objective interest index. Further, a rate equal to the highest, lowest, or average of two or more objective interest indices is a rate based on an objective interest index.

(ii) *Weighted average rate*—(A) *In general.* A rate based on a weighted average of the interest rates on some or all of the qualified mortgages held by a REMIC is a variable rate. The qualified mortgages taken into account must, however, bear interest at a fixed rate or at a rate described in paragraph (a) (2) or (3) of this section. Generally, a weighted average interest rate is a rate that, if applied to the aggregate outstanding principal balance of a pool of mortgage loans for an accrual period, produces an amount of interest that equals the sum of the interest payable on the pooled loans for that accrual period. Thus, if the aggregate principal balance of a pool of mortgage loans is $1,000,000, and, for a particular accrual period, the pool consists of $300,000 of loans bearing a 7 percent interest rate and $700,000 of loans bearing a 9.5 percent interest rate, then the weighted average rate for the pool of loans is 8.75 percent.

(B) *Reduction in underlying rate.* For purposes of paragraph (a)(3)(ii)(A) of this section, an interest rate is considered to be based on a weighted average rate even if, in determining that rate, the interest rate on some or all of the qualified mortgages is first reduced by a number of basis points or a fixed percentage of the interest on the underlying mortgages. Further, the amount of the reduction may vary from mortgage to mortgage. A rate determined by taking a weighted average of the interest rates on the qualified mortgage loans net of any servicing spread, credit enhancement fees, or other expenses of the REMIC is a rate based on a weighted average rate for the qualified mortgages.

(iii) *Additions, subtractions, and multiplications.* A rate is a variable rate if it is—

(A) Expressed as a fixed multiple of a rate described in paragraph (a)(3) (i) or (ii) of this section,

(B) Expressed as a constant number of basis points more or less than a rate described in paragraph (a)(3) (i) or (ii) of this section, or

(C) Expressed as a fixed multiple of a rate described in paragraph (a)(3) (i) or (ii) of this section, plus or minus a constant number of basis points.

(iv) *Caps and floors.* A rate is a variable rate if it is a rate that would be described in paragraphs (a)(3) (i) through (iii) of this section except that it is—

(A) Limited by a cap or ceiling that establishes either a maximum rate or a maximum number of basis points by which the rate may increase from one accrual or payment period to another or over the term of the interest, or

(B) Limited by a floor that establishes either a minimum rate or a maximum number of basis points by which the rate may decrease from one accrual or payment period to another or over the term of the interest.

(v) *Combination of rates.* A rate is a variable rate if it is based on—

(A) One fixed rate during one or more accrual or payment periods and a different fixed rate or rates, or a rate or rates described in paragraphs (a)(3) (i) through (iv) of this section, during other accrual or payment periods, or

(B) A rate described in paragraphs (a)(3) (i) through (iv) of this section during one or more accrual or payment periods and a fixed rate or rates, or a different rate or rates described in paragraphs (a)(3) (i) through (iv) of this section in other periods.

(4) *Fixed terms on the startup day.* For purposes of paragraph (a) of this section, a regular interest in a REMIC has fixed terms on the startup day if, on the startup day, the REMIC's organizational documents irrevocably specify:

(i) The principal amount (or other similar amount) of the regular interest,

(ii) The interest rate or rates used to compute any interest payments (or other similar amounts) on the regular interest, and

(iii) The latest possible maturity date of the interest.

(5) *Contingencies prohibited.* Except for the contingencies specified in paragraph (b)(3) of this section, the principal amount (or other similar amount) and the latest possible maturity date of the interest must not be contingent.

(b) *Special rules for regular interests—(1) Call premium.* An interest in a REMIC does not qualify as a regular interest if the terms of the interest

entitle the holder of that interest to the payment of any premium determined with reference to the length of time that the regular interest is outstanding, other than one described in paragraph (b)(2) of this section.

(2) *Pass through of customary prepayment penalties.* An interest in a REMIC does not fail to qualify as a regular interest solely because the terms of the regular interest provide that customary prepayment penalties received with respect to qualified mortgages are to be passed through to the holders of that interest.

(3) *Certain contingencies disregarded.* An interest in a REMIC does not fail to qualify as a regular interest solely because it is issued subject to some or all of the contingencies described in paragraphs (b)(3) (i) through (v) of this section.

(i) *Prepayments, income, and expenses.* An interest does not fail to qualify as a regular interest solely because—

(A) The timing of (but not the right to or amount of) principal payments (or other similar amounts) is contingent on the extent of prepayments on some or all of the qualified mortgages held by the REMIC and the amount of income from permitted investments (as defined in § 1.860G–2(g)), or

(B) The timing of interest and principal payments is contingent on the payment of expenses incurred by the REMIC.

(ii) *Credit losses.* An interest does not fail to qualify as a regular interest solely because the amount or the timing of payments of principal or interest (or other similar amounts) with respect to a regular interest is contingent upon the absence of defaults on qualified mortgages and permitted investments, or on the amount of income generated by permitted investments.

(iii) *Subordinated interests.* An interest does not fail to qualify as a regular interest solely because that interest bears all, or a disproportionate share, of the losses stemming from cash flow shortfalls due to defaults or delinquencies on qualified mortgages or permitted investments, lower than reasonably expected returns on permitted investments, expenses incurred by the REMIC, or prepayment interest shortfalls before other regular interests or the residual interest bear losses occasioned by those shortfalls.

(iv) *Deferral of interest.* An interest does not fail to qualify as a regular interest solely because that interest, by its terms, provides for deferral of interest payments.

(v) *Prepayment interest shortfall.* An interest does not fail to qualify as a regular interest solely because the amount of interest payments is contingent upon prepayments made on the underlying mortgages.

(4) *Form of regular interest.* A regular interest in a REMIC may be issued in the form of debt, stock, an interest in a partnership or trust, or any other form permitted by state law. If a regular interest in a REMIC is not in the form of debt, it must, except as provided in paragraph (a)(2)(iv) of this section, entitle the holder to a specified amount that would, were the interest issued in debt form, be identified as the principal amount of the debt.

(5) *Interest disproportionate to principal*—(i) *In general.* An interest in a REMIC does not qualify as a regular interest if the amount of interest (or other similar amount) payable to the holder is disproportionately high relative to the specified principal amount. Interest payments (or other similar amounts) are considered disproportionately high if the issue price (as determined under paragraph (d) of this section) of the interest in the REMIC exceeds 125 percent of its specified principal amount.

(ii) *Exception.* A regular interest in a REMIC that entitles the holder to interest payments consisting of a specified portion of interest payments on qualified mortgages qualifies as a regular interest even if the amount of interest is disproportionately high relative to the specified principal amount.

(6) *Regular interest treated as a debt instrument for all Federal income tax purposes.* In determining the tax under chapter 1 of the Internal Revenue Code, a REMIC regular interest (as defined in paragraph (a) of this section) is treated as a debt instrument that is an obligation of the REMIC. Thus, sections 1271 through 1288, relating to bonds and other debt instruments, apply to a regular interest. For special rules relating to the accrual of original issue discount on regular interests, see section 2272(a)(6).

(c) *Residual interest.* A residual interest is an interest in a REMIC that is issued on the startup day (as defined in section 860G(a)(9) and § 1.860G–2(j)) and that is designated as a residual interest by providing the information specified in § 1.860D–1(d)(2)(ii) at the time and in the manner provided in § 1.860D–1(d)(2). A residual interest need not entitle the holder to any distributions from the REMIC.

(d) *Issue price of regular and residual interests.* The issue price of any REMIC regular or residual interest is determined under section 1273(b) as if the interest were a debt instrument. Thus, if an interest is publicly offered within the meaning of § 2.2273–2(a)(2) (as proposed April 8, 1986 (51 FR 12051)), then the issue price is the initial offering price to the public. The term *the public* does not include brokers or other middlemen, nor does it include the sponsor who acquires all of the regular and residual interests from the REMIC on the startup day in a transaction described in § 2.860F–2(a). If an interest is retained by the sponsor, the issue price of the retained interest is its fair market value on the pricing date (as defined in § 2.860F–2(b)(3)(iii)), if any, or, if none, the startup day, regardless of whether the interest or the property exchanged therefor is publicly traded.

§ 1.860G–2 Other rules.

(a) *Principally secured by an interest in real property*—(1) *In general.* For purposes of section 860G(a)(3)(A), an obligation is principally secured by an interest in real property only if the fair market value of the real property (within the meaning of paragraph (a)(4) of this section) securing the obligation—

(i) Was at least equal to 80 percent of the adjusted issue price of the obligation at the time the obligation was originated, or

(ii) Is at least equal to 80 percent of the adjusted issue price of the obligation at the time the sponsor contributes the obligation to the REMIC.

(2) *Treatment of liens.* For purposes of paragraph (a)(1) of this section, the fair market value of the real property interest must be first reduced by the amount of any lien on the real property interest that is senior to the obligation being tested, and must be further reduced by a proportionate amount of any lien that is in parity with the obligation being tested.

(3) *Safe harbor.* For purposes of paragraph (a)(1) of this section, if, at the time the sponsor contributes an obligation to a REMIC, the sponsor reasonably believes that the obligation is principally secured by real property (within the meaning of paragraph (a)(1) of this section), then the obligation is deemed to be principally secured by real property. If it is later discovered that the obligation is not so secured, the obligation becomes a defective obligation on the date of discovery. See § 1.860G–2(f) relating to defective obligations. A reasonable belief for purposes of this paragraph (a)(3) may be based on representations and warranties made by the originator of the obligations.

(4) *Real property defined.* The term *real property* means land or improvements thereon, such as buildings

or other inherently permanent structures thereon (including items that are structural components of the buildings or structures). Local law definitions are not controlling for purposes of determining the meaning of the term *real property* as used in section 860G and the regulations thereunder. The term includes, for example, the wiring in a building, plumbing systems, central heating or central air-conditioning machinery, pipes or ducts, elevators or escalators installed in the building, or other items which are structural components of a building or other permanent structure. The term does not include assets accessory to the operation of a business, such as machinery, printing press, transportation equipment which is not a structural component of the building, office equipment, refrigerators, individual air-conditioning units, grocery counters, furnishings of a motel, hotel, or office building, etc., even though such items may be termed fixtures under local law.

(5) *Obligations secured by real property.* Obligations that may be considered secured by real property include: mortgages, deeds of trust, and installment land contracts; mortgage pass-thru certificates guaranteed by GNMA, FNMA, or FHLMC, or other investment trust interests that represent undivided beneficial ownership in a pool of real estate mortgage loans, provided the investment trust is classified as a trust under § 302.7702–4(c) of this chapter; and obligations secured by manufactured housing, without regard to the treatment of the obligations or the properties under state law and provided the properties qualify as single family residences under section 25(e)(10).

(6) *Obligations secured by other obligations.* Other than regular interests in a REMIC, obligations that are secured by other obligations are not principally secured by interests in real property even if the underlying obligations are secured by interests in real property. Thus, for example, a collateralized mortgage obligation issued by an issuer that is not a REMIC or a residual interest in a REMIC is not an obligation principally secured by an interest in real property.

(7) *Defeasance.* If a REMIC releases its lien on real property that secures a qualified mortgage, that mortgage ceases to be a qualified mortgage on the date the lien is released unless—

(i) The mortgagor pledges substitute collateral that consists solely of government securities (as defined in section 2(a)(16) of the Investment Company Act of 1940 as amended (15 U.S.C. 80a–1));

(ii) The mortgage documents allow such a substitution;

(iii) The lien is released to facilitate the disposition of the property; and

(iv) The defeasance is not within 2 years of the startup day.

(8) *Stripped bonds and coupons.* The term *qualified mortgage* includes stripped bonds and stripped coupons (as defined in section 2286(e) (2) and (3)) if the bonds (as defined in section 1286(e)(1)) from which such stripped bonds or stripped coupons arose would have been qualified mortgages.

(b) *Assumptions and modifications*—(1) *Modifications are treated as exchanges of mortgages.* Except as provided in paragraph (b)(3) of this section, the modification of a mortgage (as defined in paragraph (b)(2) of this section) is treated as an acquisition of the modified mortgage by the REMIC in exchange for the unmodified mortgage on the date the modification occurs. Thus, except as provided in paragraph (b)(3) of this section, if a modification occurs after the startup day, the modified mortgage will not be a qualified mortgage unless it is a qualified replacement mortgage (as defined in section 860G(a)(4)).

(2) *Modification defined.* For purposes of paragraph (b)(1) of this section, a mortgage has been modified if its new terms differ "materially either in kind or in extent," within the meaning of § 1.1001–1(a), from its former terms.

(3) *Exceptions.* For purposes of paragraph (b)(1) of this section, the following changes in the terms of a mortgage are not modifications (regardless of whether they would be modifications under paragraph (b)(2)) of this section and, therefore, are not prohibited transactions as defined in section 860F(a)(2):

(i) A change in the terms of the mortgage occasioned by default or a reasonably foreseeable default,

(ii) Assumption of the mortgage,

(iii) Waiver of a due-on-sale clause, and

(iv) Conversion of an interest rate by a mortgagor pursuant to the terms of a convertible adjustable rate mortgage.

(4) *Assumption defined.* For purposes of paragraph (b)(3) of this section, a mortgage has been assumed if—

(i) The buyer of the mortgaged property acquires the property subject to the mortgage, without assuming any personal liability;

(ii) The buyer becomes liable for the debt but the seller also remains liable, or

(iii) The buyer becomes liable for the debt and the seller is released by the lender.

(5) *Pass-thru certificates.* If a REMIC holds as a qualified mortgage a pass-thru certificate or other investment trust interest of the type described in paragraph (a)(5) of this section, the modification of a mortgage loan that backs the pass-thru certificate or other interest is not a modification of the pass-thru certificate or other interest so long as the investment trust structure was not created to avoid the prohibited transaction rules of section 860F(a).

(c) *Treatment of certain credit enhancement contracts*—(1) *In general.* A credit enhancement contract (as defined in paragraph (c)(2) of this section) is not treated as a separate asset of the REMIC for purposes of the asset test set out in section 860D(a)(4) and § 1.860D–1(b)(2), but instead is treated as part of the mortgage or pool of mortgages to which it relates. Furthermore, any collateral supporting a credit enhancement contract is not treated as an asset of the REMIC solely because it supports the guarantee represented by that contract. See paragraph (g)(1)(ii) of this section for the treatment of payments made pursuant to credit enhancement contracts as payments received under a qualified mortgage.

(2) *Credit enhancement contracts.* For purposes of this section, a credit enhancement contract is any arrangement whereby a person agrees to guarantee full or partial payment of the principal or interest payable on a qualified mortgage or on a pool of such mortgages, or full or partial payment on one or more classes of regular interests, in the event of defaults or delinquencies on qualified mortgages, or unanticipated losses or expenses incurred by the REMIC. Types of credit enhancement contracts may include, but are not limited to, pool insurance contracts, certificate guarantee insurance contracts, letters of credit, guarantees by either the REMIC sponsor or a third party, and mortgage servicer advances (as defined in paragraph (c)(3) of this section).

(3) *Certain mortgage servicer advances.* A mortgage servicer advance is a payment pursuant to an agreement by a mortgage servicer to make payments described in paragraph (c)(3)(i) or (ii) of this section, regardless of whether the mortgage servicer is obligated, or merely permitted, to make those payments.

(i) *Advances of delinquent principal and interest.* An agreement by a mortgage servicer to advance to the REMIC out of its own funds an amount to make up for delinquent payments on

qualified mortgages is a credit enhancement contract.

(ii) *Advances of taxes, insurance payments, and expenses.* An agreement by a mortgage servicer to pay taxes and hazard insurance premiums on property securing a qualified mortgage, or other expenses incurred to protect the REMIC's security interest in the collateral in the event that the mortgagor fails to pay such taxes, insurance premium, or other expenses, is a credit enhancement contract.

(d) *Treatment of certain purchase agreements with respect to convertible mortgages*—(1) *In general.* For purposes of sections 860D(a)(4) and 860G(a)(3), a purchase agreement (as described in paragraph (d)(3) of this section) with respect to a convertible mortgage (as described in paragraph (d)(4) of this section) is treated as incidental to the convertible mortgage to which it relates. Consequently, the purchase agreement is part of the mortgage or pool of mortgages and is not a separate asset of the REMIC.

(2) *Treatment of amounts received under purchase agreements.* For purposes of sections 860A through 860G and for purposes of determining the accrual of original issue discount and market discount under sections 1272(a)(6) and 1276, respectively, a payment under a purchase agreement described in paragraph (d)(3) of this section is treated as a prepayment in full of the mortgage to which it relates. Thus, for example, a payment under a purchase agreement with respect to a qualified mortgage is considered a payment received under a qualified mortgage within the meaning of section 860G(a)(6) and the transfer of the mortgage is not a disposition of the mortgage within the meaning of section 860F(a)(2)(A).

(3) *Purchase agreement.* A purchase agreement is a contract between the holder of a convertible mortgage and a third party under which the holder agrees to sell and the third party agrees to buy the mortgage for an amount equal to its current principal balance plus accrued but unpaid interest if and when the mortgagor elects to convert the terms of the mortgage.

(4) *Convertible mortgage.* A convertible mortgage is a mortgage that gives the obligor the right at one or more times during the term of the mortgage to elect to convert from one interest rate to another. The new rate of interest must be determined pursuant to the terms of the instrument and intended to approximate a market rate of interest for newly originated mortgages at the time of the conversion.

(e) *Prepayment interest shortfalls.* An agreement by a mortgage servicer or other third party to make payments to the REMIC to make up prepayment interest shortfalls is not treated as a separate asset of the REMIC and payments made pursuant to such an agreement are treated as payments on the qualified mortgages. With respect to any mortgage that prepays, a prepayment interest shortfall is an amount equal to the excess of the interest that would have accrued on the mortgage during that accrual period had it not prepaid, over the interest that accrued from the beginning of that accrual period up to the date of the prepayment.

(f) *Defective obligations*—(1) *Defective obligation defined.* For purposes of sections 860G(a)(4)(B)(ii) and 860F (a)(2), a defective obligation is a qualified mortgage that either—

(i) Is in default, or with respect to which a default is reasonably foreseeable,

(ii) Was fraudulently procured by the mortgagor,

(iii) Was not in fact secured by real property the fair market value of which at least equaled 80 percent of the adjusted issue price either at issuance or at the time of contribution to the REMIC, or

(iv) Was transferred to the REMIC in violation of a customary representation or warranty given by the sponsor or prior owner of the mortgage regarding the characteristics of the mortgage, or the characteristics of the pool of mortgages of which the mortgage is a part. A representation that payments on a qualified mortgage will be received at a rate no less than a specified minimum or no greater than a specified maximum is not customary for this purpose.

(2) *Effect of discovery of defect.* If it is discovered that an obligation is a defective obligation, and if the defect is one that, had it been discovered before the startup day, would have prevented the obligation from being a qualified mortgage, then, unless the REMIC either causes the defect to be cured or disposes of the defective obligation within 90 days of discovering the defect, the obligation ceases to be a qualified mortgage at the end of that 90 day period. Even if the defect is not cured, the defective obligation is, nevertheless, a qualified mortgage from the startup day through the end of the 90 day period. If the defect is one that does not affect the status of an obligation as a qualified mortgage, then the obligation is always a qualified mortgage regardless of whether the defect is or can be cured. For example, if a sponsor represented that all mortgages transferred to a REMIC had a 10 percent interest rate, but it was later discovered that one mortgage had a 9 percent interest rate, the 9 percent mortgage is defective, but the defect does not affect the status of that obligation as a qualified mortgage.

(g) *Permitted investments*—(1) *Cash flow investment*—(i) *In general.* For purposes of section 860G(a)(6) and this section, a cash flow investment is an investment of payments received on qualified mortgages for a temporary period between receipt of those payments and the regularly scheduled date for distribution of those payments to REMIC interest holders. Cash flow investments must be passive investments earning a return in the nature of interest.

(ii) *Payments received on qualified mortgages.* For purposes of paragraph (g)(1) of this section, the term "payments received on qualified mortgages" includes—

(A) Payments of interest and principal on qualified mortgages, including prepayments of principal and payments under credit enhancement contracts described in paragraph (c)(2) of this section;

(B) Proceeds from the disposition of qualified mortgages;

(C) Cash flows from foreclosure property and proceeds from the disposition of such property;

(D) A payment by a sponsor or prior owner of a defective obligation, as defined in paragraph (f) of this section, in lieu of the sponsor's or prior owner's repurchase of that defective obligation where the obligation was transferred to the REMIC in breach of a customary warranty; and

(E) Prepayment penalties required to be paid under the terms of a qualified mortgage when the mortgagor prepays the obligation.

(iii) *Temporary period.* For purposes of section 860G(a)(6) and paragraph (g)(1) of this section, a temporary period generally is that period from the time a REMIC receives payments on qualified mortgages and permitted investments to the time the REMIC distributes the payments to interest holders. A temporary period may not exceed 13 months. Thus, an investment held by a REMIC for more than 13 months is not a cash flow investment.

(2) *Qualified reserve funds.* The term qualified reserve fund means any reasonably required reserve to provide for full payment of expenses of the REMIC or amounts due on regular or residual interest in the event of defaults on qualified mortgages, prepayment interest shortfalls (as defined in paragraph (e) of this section), or lower

than expected returns on cash flow investments (as defined in paragraph (g)(1) of this section).

(3) *Qualified reserve asset*—(i) *In general.* The term *qualified reserve asset* means any intangible property (other than a REMIC residual interest) that is held both for investment and as part of a qualified reserve fund. An asset need not generate any income to be a qualified reserve asset.

(ii) *Reasonably required reserve*—(A) *In general.* In determining whether the amount of a reserve is reasonable, it is appropriate to consider the credit quality of the qualified mortgages, the extent and nature of any guarantees relating to the qualified mortgages, the expected amount of expenses of the REMIC, and the expected availability of proceeds from qualified mortgages to pay the expenses. To the extent that a reserve exceeds a reasonably required amount, the amount of the reserve must be promptly and appropriately reduced. If at any time, however, the amount of the reserve fund is less than is reasonably required, the amount of the reserve fund may be increased by the addition of payments received on qualified mortgages or by contributions from holders of residual interests.

(B) *Presumption that a reserve is reasonably required.* The amount of a reserve fund is presumed to be reasonable and is presumed to be promptly and appropriately reduced if it does not exceed—

(*1*) The amount required by a nationally recognized independent rating agency to give the rating desired by the sponsor, or

(*2*) The amount required by a third party insurer or guarantor, who does not own directly or indirectly (within the meaning of section 267(c) of the Code) an interest in the REMIC (as defined in § 1.860D–1(b)(1)), as a requirement of providing credit enhancement.

(C) *Presumption may be rebutted.* The presumption in paragraph (g)(3)(ii)(B) of this section, however, may be rebutted if the amounts required by the rating agency or by the third party insurer are not commercially reasonable considering the factors described in paragraph (g)(3)(ii)(A) of this section.

(h) *Outside reserve funds.* A reserve fund that is maintained to pay expenses of the REMIC, or to make payments on regular interests in the event that the REMIC experiences cash flow shortfalls due to defaults or delinquencies on qualified mortgages or cash flow investments, or lower than expected returns on cash flow investments, is an outside reserve fund and not an asset of the REMIC only if the REMIC's organizational documents clearly and expressly—

(1) Provide that the reserve fund is an outside reserve fund and not an asset of the REMIC;

(2) Identify the owner(s) of the reserve fund, either by name, or by description of the class (*e.g.*, subordinated regular interest holders) whose membership comprises the owners of the fund; and

(3) Provide that, for all Federal tax purposes, amounts transferred by the REMIC to the fund are treated as amounts distributed by the REMIC to the designated owner(s) or transferees of the designated owner(s).

(i) *Clean-up call*—(1) *In general.* For purposes of section 860F(a)(5)(B), a clean-up call is the redemption of a class of regular interests when, by reason of prior payments with respect to those interests, the administrative costs associated with servicing that class outweigh the benefits of maintaining the class. Some factors to consider in making this determination include—

(i) The number of holders of that class of regular interests;

(ii) The frequency of payments to holders of that class;

(iii) The effect the redemption will have on the yield of that class of regular interests;

(iv) The outstanding principal balance of that class; and

(v) The percentage of the original principal balance of that class still outstanding.

(2) *Interest rate changes.* The redemption of a class of regular interests undertaken to profit from a change in interest rates is not a clean-up call.

(3) *Safe harbor.* Although the outstanding principal balance is only one factor to consider, the redemption of a class of regular interests with an outstanding principal balance of no more than 10 percent of its original principal balance is always a clean-up call.

(j) *Startup day*—The term "startup day" means the day on which the REMIC issues all of its regular and residual interests. A sponsor may, however, contribute property to a REMIC in exchange for regular and residual interests over any period of 10 consecutive days and the REMIC may designate any one of those 10 days as its startup day. The day so designated is then the startup day, and all interests are treated as issued on that day.

§ 1.860G–3 Treatment of foreign persons.

(a) *Transfer of a residual interest with tax avoidance potential*—(1) *In general.* A transfer of a residual interest that has tax avoidance potential is disregarded for all Federal tax purposes if the transferee is a foreign person.

(2) *Tax avoidance potential.* A residual interest has tax avoidance potential for purposes of this section unless, at the time of the transfer—

(i) The expected future distributions on the residual interest equal at least 30 percent of the anticipated excess inclusions (as defined in § 1.860E–2(a)(4)), and

(ii) The transferor reasonably expects that the transferee will receive sufficient distributions from the REMIC at or after the time at which the excess inclusions accrue. Thus, for example, if substantially deferred distributions are anticipated with respect to a residual interest, the interest will not have tax avoidance potential so long as the anticipated distributions are sufficient to satisfy the tax and withholding liability that is expected to have previously accrued with respect to the anticipated excess inclusions.

(3) *Effectively connected income.* Paragraph (a)(1) of this section will not apply if the income from the residual interest is subject to tax under section 871(b) or section 882 in the hands of the transferee.

(4) *Transfer by a foreign holder.* If a foreign person transfers a residual interest to a United States person, and if the transfer has the effect of allowing the transferor to avoid tax on accrued excess inclusions, then the transfer is disregarded and the transferor continues to be treated as the owner of the residual interest for purposes of sections 871(a), 881, 1441, or 1442.

(b) *Regular interest.* See § 1.163–5T(e) for the tax treatment of regular interests held by foreign persons.

Par. 8. Section 1.6041–1 is amended by:

1. Designating the text of paragraph (b) as the text of paragraph (b)(1) and adding a heading for paragraph (b)(1) to read as set forth below.

2. Adding a new paragraph (b)(2) to read as set forth below.

§ 1.6041–1 Return of information as to payments of $600 or more.

* * * * *

(b) *Persons engaged in trade or business*—(1) *In general.* * * *

(2) *Special rule for REMICs.* For purposes of chapter 1 subtitle F, chapter 61A, part IIIB, the terms "all persons engaged in a trade or business" and "any service-recipient engaged in a trade or business" includes a real estate mortgage investment conduit or REMIC (as defined in section 860D).

* * * * *

PART 301—PROCEDURE AND ADMINISTRATION

Par. 9. The authority citation for part 301 continues to read in part:

Authority: Sec. 7805, I.R.C. 1954; 68A Stat. 917; 26 U.S.C. 7805 * * *

Par. 10. Section 301.7701–13A is amended by adding a new paragraph (e)(12) to read as set forth below:

§ 301.7701–13A Post-1969 domestic building and loan association.

* * * * *

(e) * * *

(12) *Regular or residual interest in a REMIC*—(i) *In general.* If for any calendar quarter at least 95 percent of a REMIC's assets (as determined in accordance with § 1.860F–4(e)(1)(ii) or § 1.6049–7(f)(3)) are assets described in paragraphs (e)(1) through (e)(11) of this section, then for that calendar quarter, all the regular and residual interests in that REMIC are treated as assets described in paragraphs (e)(1) through (e)(11) of this section. If less than 95 percent of a REMIC's assets are assets described in paragraphs (e)(1) through (e)(11) of this section, then a percentage of each REMIC regular or residual interest are treated as assets described in paragraphs (e)(1) through (e)(11) of this section equal to the percentage of the REMIC's assets that are assets described in paragraphs (e)(1) through (e)(11) of this section. See § 1.860F–4(e)(1)(ii)(B) and § 1.6049–7(f)(3) for information required to be provided to regular and residual interest holders if the 95 percent test is not met.

(ii) *Manufactured housing treated as asset described in paragraphs (e)(1) through (e)(12).* For purposes of paragraphs (e)(12) (i) and (ii) of this section, a loan secured by manufactured housing that qualifies as a single family residence under section 25(e)(10) is an asset described in paragraphs (e)(1) through (e)(11) of this section.

* * * * *

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 91–22853 Filed 9–27–91; 8:45 am]

BILLING CODE 4830–01–M

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26 CFR Parts 1 and 301

[FI–88–86]

RIN 1545–AJ35

Real Estate Mortgage Investment Conduits; Hearing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of public hearing on proposed regulations relating to real estate mortgage investment conduits, or REMICs.

DATES: The public hearing will be held on Thursday, December 5, 1991, beginning at 10 a.m. Requests to speak and outlines of oral comments must be received by Thursday, November 21, 1991.

ADDRESSES: The public hearing will be held in the Internal Revenue Service Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC. Requests to speak and outlines of oral comments should be submitted to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R, (FI–88–86), room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Carol Savage of the Regulations Unit, Assistant Chief Counsel (Corporate), 202–377–9236 or (202) 566–3935 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under sections 860A through 860G of the Internal Revenue Code of 1986. The proposed regulations appear elsewhere in this issue of the **Federal Register.**

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Thursday, November 21, 1991, an outline of the oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be permitted beyond the lobby of the Internal Revenue Service Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 91–22852 Filed 9–27–91; 8:45 am]

BILLING CODE 4830–01–M

federal register

Monday
September 30, 1991

Part III

Environmental Protection Agency

40 CFR Part 82

Protection of Stratospheric Ozone; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL-4012-1]

Protection of Stratospheric Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: With this notice, EPA proposes to conform its stratospheric ozone protection regulations (40 CFR part 82) to the requirements of title VI of the Clean Air Act Amendments of 1990 (the Amendments), Public Law 101–549. The existing regulations implement the original Montreal Protocol on Substances that Deplete the Ozone Layer, which the United States ratified in 1988, and the 1991 requirements of section 604 of the Clean Air Act (CAA) as amended. Today's notice proposes amended regulations implementing the 1992 and later requirements of section 604, as well as the related provisions of sections 603, 607 and 616, in a manner consistent with the United States' continuing obligations under the Montreal Protocol as amended.

Specifically, EPA proposes to (1) Apportion baseline allowances to produce or import ozone-depleting substances to companies that produced or imported certain ozone-depleting substances in the baseline years; (2) allocate decreasing amounts of those allowances to the companies according to the phase-out schedule prescribed by section 604; (3) also apply an 18-month cap from July 1, 1991 to December 31, 1992 on production and consumption as required under the Protocol; (4) permit transfers of allowances provided the transferor's remaining allowances are reduced by the amount it transferred plus one percent of the amount transferred; (5) permit production in excess of the amount authorized by the original allocation of allowances in order to supply developing countries that are operating under article 5 of the Protocol, so long as producers provide adequate assurances that the production supplied to the developing country will not be reexported; (6) permit transfers of allowable production with other Protocol Parties under certain conditions; (7) change the approach to granting additional allowances for transforming ozone-depleting substances in the case of carbon tetrachloride; and (8) impose additional reporting and record-keeping requirements as needed to include several newly regulated chemicals in the phase-out program.

DATES: Comments on the notice of proposed rulemaking (NPRM) must be submitted on or before October 30, 1991, if no hearing is held, or November 14, 1991, if the hearing is held.

EPA will conduct a public hearing on this NPRM on October 15, 1991 beginning at 1 p.m. The contact person listed in **FOR FURTHER INFORMATION CONTACT** may be called regarding a public hearing.

ADDRESSES: Comments on the NPRM should be submitted (in duplicate if possible) to: The Air Docket, room M–1500 (LE–131). Waterside Mall, Attention: Docket No. A–91–50, 401 M Street SW., Washington, DC 20460.

The hearing will be held at the EPA Auditorium in Washington, DC.

Materials relevant to this proposed rulemaking are contained in Docket No. A–91–50. The docket is located at the above address and may be inspected from 8:30 a.m. until noon and from 1:30 p.m. until 3:30 p.m. Monday through Friday. A reasonable fee may be charged by EPA for copying docket materials.

FOR FURTHER INFORMATION CONTACT: David Lee, Stratospheric Ozone Protection Branch, Global Change Division, Office of Atmospheric and Indoor Air Programs, Office of Air and Radiation, ANR–445, 401 M Street, SW., Washington, DC 20460, (202) 475–7497.

SUPPLEMENTARY INFORMATION:

I. Background

A. Overview of the Ozone Depletion Problem

Stratospheric ozone shields the earth's surface from dangerous ultraviolet (UV–B) radiation. In response to growing scientific evidence, a national and international consensus has developed that certain human-made halocarbons deplete stratospheric ozone. To the extent depletion occurs, it is believed that penetration of UV–B radiation will increase, resulting in potential health and environmental harm including increased incidence of certain skin cancers and cataracts, suppression of the immune system, damage to crops and aquatic organisms, increased formation of ground-level ozone, and increased weathering of outdoor plastics. (See section C below for more information on the effects of ozone depletion.)

Different chlorine- and bromine-containing substances vary in their potential to deplete stratospheric ozone. The fully halogenated chlorofluorocarbons (CFCs), halons, and carbon tetrachloride, for example, are such stable molecules that they reach the stratosphere largely intact and only there are degraded by high energy solar radiation. The chlorine or bromine from these chemicals is then released in forms (or chemical precursors of forms) which are extremely effective in depleting ozone. In contrast, methyl chloroform has a substantially shorter atmospheric lifetime but is used in such large quantities that it contributes significantly to total atmospheric chlorine levels. Hydrochlorofluorocarbons (HCFCs) also have relatively short atmospheric lifetimes and are only beginning to be introduced as substitutes for fully halogenated CFCs. Future use of HCFCs must be carefully evaluated on the basis of both potential volumes and atmospheric lifetimes.

Most halocarbons that pose a threat to the stratospheric ozone layer are also among the most potent greenhouse gases, which many scientists believe will gradually cause an increase in the surface temperature of the earth. Molecule for molecule, CFCs are thousands of times more powerful greenhouse gases than carbon dioxide, and emissions of CFCs in the last decade have been estimated to constitute 15 to 20 percent of the total greenhouse potential during this period.

B. Scientific Evidence of Ozone Depletion

The initial hypothesis linking CFCs and depletion of the stratospheric ozone layer was published in 1974. A paper by research scientists Molina and Rowland suggested that industrial halocarbons could be stable enough that they would not react with the hydroxyl (OH) radical in the lower atmosphere, but would rise up to the stratosphere largely intact. There they could be broken down by high energy ultraviolet (UV–B) radiation and attack the thin layer of ozone molecules blanketing the earth. The chlorine (Clx) from CFCs would react catalytically with the ozone so that each molecule could destroy thousands of ozone molecules before leaving the stratosphere.

Between 1974 and 1987, the scientific community made remarkable advances in understanding atmospheric processes affecting stratospheric ozone. Several atmospheric models were developed indicating that the ozone layer would begin depleting by the middle of the next century with unabated use of CFCs. In response to this threat, the international community negotiated the Montreal Protocol, which limited the production and consumption of a

narrow set of ozone-depleting substances.

Despite the sophistication of the models on which the Protocol was based, scientists were unable to predict the extent of decrease in stratospheric ozone that was observed in the se and early in this decade. Most dramatically, a seasonal loss of ozone over the south pole, known as the "Antarctic ozone hole " was discovered in 1985. Shortly after the Protocol was signed in 1987, an international team of scientists collected and analyzed evidence linking the ozone hole to CFCs. This report also suggested that some depletion of global ozone levels had already occurred (Ozone Trends Panel Report: Executive Summary, 1988). In response, the Parties to the Protocol agreed to accelerate the assessment process required under article 6 of the Protocol. The results of the Protocol assessment were issued in 1989 and further heightened concern that chlorine- and bromine-containing substances had already led to a greater depletion of stratospheric ozone than had been expected. The most important findings were as follows:

1. Antarctic Ozone Hole

The weight of scientific evidence strongly indicated that human-made halocarbons are primarily responsible for the recently discovered substantial seasonal decreases of stratospheric ozone over Antarctica.

2. Perturbed Arctic Chemistry

While at present ozone loss over the Arctic is not as severe as it is over the Antarctic, the same potentially ozone-destroying processes were identified in the Arctic stratosphere. The degree of any future ozone depletion would likely depend on the particular meteorology of each Arctic winter and future atmospheric levels of chlorine and bromine.

3. Long-Term Ozone Decreases

The analysis of the total-column ozone data from ground-based Dobson instruments showed measurable downward trends from 1969 to 1988 of 3 to 5 percent (i.e., 1.8 to 2.7 percent per decade) in the northern hemisphere (30 to 64 degrees North latitudes) in the winter months that could not be attributed to known natural processes.

4. Model Limitations

The findings listed above led to the recognition of major gaps in theoretical models used to assess rates of ozone depletion. Initial models did not anticipate the polar ozone losses or the winter-time 3 to 5 percent drop over the northern mid-latitudes.

The scientific assessment resulted in a call to strengthen national and international controls on ozone-depleting chemicals. Adjustments adopted by the Parties to the Protocol in June of 1990 and Amendments to the Clean Air Act signed into law in November 1990 require a full phase-out of most or all specified ozone-depleting chemicals by the turn of the century.

New scientific evidence recently released by the National Air and Space Administration (NASA) indicates that stratospheric ozone over the northern mid-latitudes has depleted by three to five percent on an annual basis over the past decade. This is a rate of depletion two to three times greater than past evidence suggested. EPA is very concerned about the health and environmental implications of such a high rate of depletion and is currently reviewing the new evidence. However, any regulatory response to this evidence must await another rulemaking. The Agency is required by section 604(c) to promulgate the rules proposed today by September 15, 1991. Too little time remains before that deadline for EPA to conduct the full scientific assessment necessary to use these data in regulatory action. Therefore, EPA will not consider as part of this rulemaking whether this only recently-announced information requires the Agency to tighten reduction requirements applicable to ozone- depleting substances.

C. Health and Environmental Effects of Ozone Depletion

In its 1987 Risk Assessment of Ozone Depletion, EPA reviewed the effects of increased UV–B radiation resulting from ozone depletion. The risk assessment cited several studies that demonstrated a linkage between UV–B radiation and detrimental health effects, including increased rates of several types of skin cancer, cataracts and actinic keratosis and changes to the immune system.

Higher levels of skin cancer could lead to increased fatalities, as well as increased medical costs, decreased productivity, and increased social and economic costs.

Other detrimental health effects brought about by increases in ultraviolet radiation due to depletion of the ozone layer include effects on the immune system and skin. UV–B radiation reduces the ability of the immune system to respond adequately to disease. Higher UV–B exposures are also associated with increased incidence of actinic keratosis, pre-cancerous lesions that occur as a result of excessive exposure to the sun.

Potential environmental impacts from increased UV–B exposures include risks to marine organisms, risks to crops and impacts due to increased concentrations of tropospheric (ground-level) ozone. Impacts related to the greenhouse gas property of CFCs include effects related to higher temperatures and sea levels.

The increased levels of UV–B radiation that result from stratospheric ozone depletion pose a hazard to various marine organisms. Higher UV–B radiation levels have been shown to cause decreases in fertility, growth, survival, and other functions in a variety of marine organisms, including fish, shrimp, crab, and plants essential to the aquatic food chain (EPA 1987). Although it has also been hypothesized that these effects would likely cause a change in species composition as organisms more resistant to the increase in UV–B radiation predominated, it is not known what the long-term effects of these impacts on the ecosystem might be. Increased UV–B radiation levels are assumed to affect harvest levels for the major commercial fish species, including fin fish and shell fish.

The increase in UV–B radiation at the earth's surface expected to result from ozone depletion is estimated to have two effects on-crops: direct losses in productivity because of UV–B radiation, and secondary losses caused by increase in tropospheric ozone (smog), which also reduces productivity. Direct effects from UV–B radiation could result in losses due to harvest decline. For example, in a number of studies on a variety of crops, UV–B radiation has been shown to adversely affect crop yield and quality (Rowe and Adams, 1987).

In addition, tropospheric ozone, an air pollutant formed as a result of photochemical reactions involving ultraviolet radiation, has been shown to adversely affect human health, agricultural crops, forests, and materials. Human health impacts include alterations in pulmonary function (e.g. chest tightness, lung damage, increased susceptibility to respiratory infection) and extra-pulmonary effects such as effects on the liver, central nervous system, blood enzymes, etc. Agricultural crops and forests experience reduced growth and declines in yield. Materials such as textile fibers and dyes and some paints degrade more quickly (Rowe and Adams, 1987) (Horst, 1986).

D. Past Efforts To Control Ozone-Depleting Substances

1. Aerosol Ban in 1978

Following initial concerns raised by Molina and Rowland in 1974 about possible ozone depletion from CFCs, EPA, the Consumer Product Safety Commission and the Food and Drug Administration acted in 1978 to ban the use of CFCs as aerosol propellants in all but "essential applications" (43 FR 11301, March 17, 1978; 43 FR 11318, March 17, 1978). During the early 1970s, CFCs used as aerosol propellants constituted over 50 percent of total CFC consumption in the United States. This particular use of CFCs was reduced in this country by approximately 95 percent, cutting total United States consumption by nearly half.

In the years following the aerosol ban, CFC use increased significantly in the refrigeration, foam and solvent-using electronics industries. By 1985, CFC use in the United States had surpassed pre-1974 levels and represented 29 percent of global CFC usage.

2. Advanced Notice of Proposed Rulemaking in 1980

The National Academy of Sciences published in the late 1970s a series of studies (NAS 1976, 1979a and 1979b) that warned of substantial stratospheric ozone depletion and harm from continued use of CFCs. Largely in response to these studies, EPA issued an Advanced Notice of Proposed Rulemaking (ANPRM) which discussed an immediate freeze on the production of certain CFCs and the possibility of employing a system of marketable permits to allocate CFC consumption among industries which use CFCs (45 FR 66726; October 7, 1980).

The Agency did not act immediately on its 1980 ANPRM and was subsequently sued by the Natural Resources Defense Council (*NRDC* v. *Thomas*, No. 84-3587 (D.D.C.)) for failure to regulate CFCs further. EPA and NRDC settled the case on the basis of an agreement that called on the Agency to propose further regulatory controls on CFCs, or state its reason for deciding not to so propose, by December 1, 1987 and to take final action by August 1, 1988.

3. Stratospheric Ozone Protection Plan in 1986

In 1986 EPA published its Stratospheric Ozone Protection Plan (51 FR 1257; January 10, 1986). That plan described the analytic basis for supporting negotiations for an international agreement to control CFCs and for reassessing the need for additional domestic regulations of CFCs and other potential ozone-depleting chemicals.

EPA further evaluated the risks of ozone depletion and published its findings in "Assessing the Risks of Trace Gases That Can Modify the Stratosphere" (EPA, 1987). Based upon the Agency's risk assessment work, the Administrator concluded that an international approach was necessary to effectively safeguard the ozone layer. Releases of CFCs and other chemicals from each nation mix in the atmosphere, thereby affecting the ozone layer on a global basis. Efforts to reduce emissions by only a few nations thus could be quickly offset by increases in other nations' emissions, leaving the risks to the ozone layer unchanged.

4. Vienna Convention and 1987 Montreal Protocol

Recognizing the global nature of this issue, EPA participated in negotiations organized by the United Nations Environment Programme (UNEP) to develop an international agreement to protect the ozone layer. These negotiations successfully concluded with the signing of the Vienna Convention in 1985 and the signing of the original Montreal Protocol in 1987. Currently, 70 nations representing over 90 percent of the world's production capacity for CFCs and halons are Parties to the Protocol (see Appendix B to part 86).

The 1987 Protocol requires nations who join to restrict their production and consumption (defined as production plus imports minus exports of bulk chemicals) of CFC-11, -12, -113, -114, and -115 and halons 1211, 1301 and 2402. It does not regulate specific uses or emissions of these "controlled substances," but limits their production and importation instead. It also does not place limits on each of the substances, but instead groups the substances (e.g., the CFCs listed above are Group I and the halons are Group II) and places separate limits on the total ozone depletion potential (ODP) of each group. The Protocol thus allows a nation to change the mix of controlled substances within each group that it produces and consumes, so long as the total ODP of the mix does not exceed the specified limits. The phrase "calculated level" is used to refer to this weighting of controlled substances based on their relative ODP.

As originally drafted, the Protocol called for annual production and consumption of the five most ozone-depleting CFCs (i.e., Group I substances) and halons (i.e., Group II substances) to be frozen at 1986 levels beginning July 1, 1989 and January 1, 1992, respectively, and for CFCs to be reduced to 50 percent of 1986 levels by 1998. It also allowed for limited increases in production beyond the caps described above for the purposes of supplying developing country Parties that are operating under article 5 of the Protocol or trading allowable levels of production ("industrial rationalization") between Parties. In addition, it provided that after January 1, 1993 only exports to Parties would be subtracted from a Party's consumption, and it banned imports of controlled substances from nations which neither join nor comply with the Protocol.

5. 1988 Final Rule

a. *Overview.* EPA promulgated regulations implementing the requirements of the 1987 Protocol through a system of tradeable allowances. The Agency assured compliance with the Protocol by creating production and consumption allowances equal to the quantity of production and consumption allowed under the Protocol. The Protocol's separate treatment of Group I and Group II controlled substances was reflected in separate allowances for each group of substances. Similarly, the Protocol's application of limits to the ODP of the groups of controlled substances ("calculated level") was carried over into the definition of allowances. Thus, allowances were specified in terms of calculated level of a particular group of controlled substances, so that holders of allowances could select any mix of controlled substances within each group, provided that the total calculated level of the mix did not exceed the calculated levels of the allowances held.

b. *Baseline Allowances.* EPA apportioned allowances to producers and importers of controlled substances based on their 1986 levels of production and imports. It then allocated percentages of the allowances according to the reduction schedule specified in the Protocol. For example, for the control periods during which CFC production and consumption were to be frozen, EPA allocated 100 percent of baseline allowances.

c. *Interrelationship of consumption and production allowances.* To reflect the interrelationship of the production and consumption limits, the Agency provided that a producer needed both production and consumption allowances to produce these chemicals (since production counted against both production and consumption limits), while importers needed only consumption allowances to import

(since imports counted only against consumption).

To illustrate, a company that intends to manufacture a controlled substance must hold sufficient production allowances for the group of controlled substances to which the particular substance belongs to cover its level of production. Furthermore, since production is also included in the calculation of consumption, that company must also hold at least the same number of consumption allowances in order to produce the same controlled substances. For example, prior to producing one kilogram of CFC-12, a company must have both a one-kilogram production allowance for Group I substances and a 1-kilogram consumption allowance for the same group of substances. Once that one kilogram has been produced, a company has expended both the production allowance and consumption allowance.

A company may import controlled substances with consumption allowances alone, since imports are included in the definition of consumption but not of production. Like the producer, however, the importer must hold prior to importing sufficient consumption allowances specific to the group of controlled substances to which the substance to be imported belongs. Once the import occurs, the consumption allowances needed to cover the import are expended.

Exporters of controlled substances are required to obtain allowances in order to export. Through the export of a controlled substance, a company is decreasing the volume of controlled substance that was available for consumption in the United States. Consequently, if certain conditions are met, an exporter may obtain additional consumption allowances from EPA after the controlled substances have been exported to a Party to the Montreal Protocol (see Additional Allowances). To obtain additional allowances, the company must verify to the EPA that the export has occurred. EPA then grants additional allowances equal to the level of the export.

The following specific examples further illustrate the interrelationships between these allowances:

1. A producer has 20 kilograms of Group I (CFCs) production allowances and 15 kilograms of Group I consumption allowances. Since both production allowances and consumption allowances are needed to produce, a producer can make only 15 kilograms of Group I substances, using the 15 of its 20 production allowances and all of its 15 consumption allowances. However, if the producer then exports 5 kilograms of Group I substances, it can receive 5 additional Group I consumption allowances from EPA upon proof of export. With the additional 5 Group I consumption allowances, the company can produce 5 more kilograms of Group I substances, using its remaining 5 Group I production allowances.

2. An importer has Group I consumption allowances equal to 20 kilograms. The importer imports 20 kilograms of Group I substances using the 20 kilograms of consumption allowances and then repackages 10 kilograms for re-export. Once these 10 kilograms have been exported, the importer can report the export to EPA and request additional allowances. Upon proof of export the company will receive 10 additional Group I consumption allowances.

Once any allowance is used to produce or import a controlled substance, that allowance has been "expended" and cannot be used again. In addition, allowances are only valid for the control period for which they were issued. Consistent with the twelve-month control requirements contained in the Protocol, allowances can never be carried over to the next control period.

d. *Additional Allowances.* EPA's final rule also provided for granting of additional allowances under certain circumstances. Exporters could receive additional consumption allowances for controlled substances exported to any nation before January 1, 1993 or to any other Protocol Party beginning January 1, 1993. Producers could receive additional production allowances for exporting controlled substances to developing country Parties to the Protocol or upon the transfer of production rights from another Party to the Protocol. Allowances could also be obtained through trading in accordance with the regulations.

e. *Reporting Requirements.* To monitor industry's compliance with the production and consumption limits, EPA also required that producers and importers maintain records of their activities and report their production and import levels every quarter.

EPA promulgated its 1988 final rule under section 157(b) of the Clean Air Act as amended in 1977. That section, which was modified by the 1990 Amendments and added as section 615, authorized the Administrator to issue "regulations for the control of any substance, practice, process, or activity (or any combination thereof) which in his judgement may reasonably be anticipated to affect the stratosphere, if such effect in the stratosphere may reasonably be anticipated to endanger public health or welfare. Such regulations shall take into account the feasibility and costs of achieving such control."

Since the original rule was promulgated in 1988, minor revisions have been issued on February 9, 1989 (54 FR 6376), April 3, 1989 (54 FR 13502), July 5, 1989 (54 FR 28062), July 12, 1989 (54 FR 29337), February 13, 1990 (55 FR 5005), June 15, 1990 (55 FR 24490) and June 22, 1990 (55 FR 25812).

6. Excise Tax

As part of its Omnibus Budget Reconciliation Act of November 21, 1989, Congress levied an excise tax on most sales of CFCs and other chemicals which deplete the ozone layer. The tax has operated as an extremely useful complement to EPA's regulations limiting production and consumption. By increasing the costs of using controlled substances, the tax has increased the incentive of firms to shift away from these chemicals, has increased recycling activities, and has provided a market incentive for the introduction of alternative chemicals and processes. The Agency believes that the tax was at least partly responsible for the fact that production of CFCs during the first freeze control period under EPA's regulation was 23 percent below the allowable level.

Consistent with the expanded coverage of the Montreal Protocol and the CAA (described below), the applicability of the excise tax was recently expanded to include methyl chloroform, carbon tetrachloride and the other fully halogenated CFCs.

7. 1990 Revision of Montreal Protocol

As noted earlier, the Protocol's 1989 scientific assessment confirmed that stratospheric ozone was being depleted more quickly than originally believed. In response to the assessment, the Parties decided at their June 1990 meeting in London to completely phase out by January 1, 2000 the CFCs and halons already subject to the Protocol's control requirements and carbon tetrachloride and the "other" fully halogenated CFCs not originally regulated by the Protocol. They also agreed to phase-out methyl chloroform by 2005. In addition, the Parties decided to shift from July-through-June control periods to calendar year control periods, beginning with the 1993 control period. They provided for an 18-month transitional control period from July 1, 1991 to December 31, 1992 during which Parties would be obligated to limit their production and consumption of the already regulated CFCs and halons to 150 percent of baseline levels. (The controls on the

newly regulated chemicals do not take effect until 1993.)

The changes in reduction requirements applicable to the already regulated CFCs and halons were made as "adjustments" to the Protocol and so became binding on the Parties six months after the receipt of formal notification under the terms of the Protocol. The addition of carbon tetrachloride, methyl chloroform and the other CFCs was adopted as an "amendment" to the Protocol which will take effect January 1, 1992 provided a specified number of Protocol Parties ratify the Amendments by that date. Under the Protocol, Amendments bind only the Parties that ratify them. As a result, a nation that is a Party for purposes of the originally regulated CFCs and halons may not be a Party for purposes of carbon tetrachloride, methyl chloroform and the other CFCs.

To encourage all nations to ratify or at least comply with the Protocol and the London Amendments, the Parties also adopted additional trade sanctions against nations that fail to join or comply with all or part of the Protocol. Article 4 originally required that Parties ban imports of controlled substances from non-Parties. Amendments to article 4 require that Parties also ban exports of controlled substances to non-Parties and defines non-Parties for purposes of article 4 as including, with respect to a particular controlled substance, a nation that has not agreed to be bound by the control measures in effect for that substance. Under amended article 4, a nation that is a Party only for the original controlled substances will not be able to import or export the newly regulated controlled substances from other Parties beginning January 1, 1993.

The issue of what nations are operating under article 5 of the Protocol was addressed by the Parties, as well. Article 5 permits any developing country whose consumption of the original controlled substances is less than 0.3 kilograms per capita when it joins the Protocol to delay its compliance with the Protocol's control measures by 10 years. The Parties originally delayed designating article 5 nations on the basis that many countries had not submitted data showing that they were under the 0.3 kilogram cap. At their meeting in Nairobi in June, 1991, however, the Parties agreed on a list of article 5 countries.

At their June, 1990 meeting the Parties also passed a nonbinding resolution regarding the use of HCFCs as "transitional" or interim substitutes for CFCs. As explained above, HCFCs add much less chlorine to the stratosphere than fully halogenated CFCs, but still pose some threat to the ozone layer. The resolution calls for the use of HCFCs only where other alternatives are not feasible, with a phase-out by 2020 if feasible, and no later than 2040 in any case. The resolution also states that where required, HCFCs should be selected and used on the basis of their relative ozone depletion potential.

To encourage greater global participation in the Montreal Protocol and the London revision, the Parties established a fund to provide financial and technical assistance to help developing countries who qualified under article 5 of the Protocol make the transition away from ozone-depleting substances.

8. The Clean Air Act Amendments of 1990

Shortly after the Protocol Parties' London meeting, the United States Congress passed the Clean Air Act Amendments of 1990. The restrictions on production and consumption of ozone-depleting substances found in title VI of the Clean Air Act are similar to those in the London Amendments, although interim targets are more stringent and the phase-out of methyl chloroform is earlier.

The Amendments to the Act also require EPA to promulgate regulations to ensure the "lowest achievable levels" of emissions in all user sectors, to ban nonessential products, to limit the use of harmful substitutes, and to mandate warning labels. Today's notice proposes one of several regulations that will implement the Amendments' title VI provisions.

II. Statutory Authority

Title VI of the CAA as amended in 1990 provides for the phase-out of ozone-depleting substances through provisions contained in several sections. Section 602 directs EPA to issue within 60 days of enactment of the 1990 Amendments two lists of ozone-depleting chemicals. One list is to include the chemicals already regulated under the Protocol and EPA's regulations (i.e., the five CFCs and three halons), as well as the chemicals to be regulated under the revised Protocol (i.e., all other fully halogenated CFCs, carbon tetrachloride and methyl chloroform) and their isomers (except 1,1,2-trichloroethane, an isomer of methyl chloroform). The chemicals on that list are collectively called "class I" substances. The second list is to include all the HCFCs and their isomers; these chemicals are referred to as "class II" substances. For each of the chemicals listed, EPA must also assign an ozone depletion potential, a chlorine or bromine loading potential, an atmospheric lifetime and, within one year of enactment, a global warming potential. EPA published the required listing notice, including ODPs, etc., on January 22, 1991 (56 FR 2420).

Section 603 directs EPA to amend its regulations to implement new requirements regarding monitoring and reporting of class I and class II substances. Included in this section are requirements for industry reports on production, import and export levels of class I and class II substances and periodic EPA reports to Congress on specified industry activities, atmospheric conditions, and the status of substitute technology.

Section 604(a) makes it unlawful for any person to produce any class I substance in an annual quantity greater than the specified percentages of the quantity of the substance produced by that person in the baseline year. (Section 601(2) defines baseline year as 1986 for the already regulated chemicals and 1989 for the newly regulated chemicals.) The provision is self-effectuating. The first control period in the reduction schedule began on January 1, 1991 and runs through the end of December of this year. It requires a freeze for carbon tetrachloride and methyl chloroform and a 15 percent reduction for all remaining class I substances.

Section 604(c) calls for EPA to promulgate within 10 months of enactment regulations to implement the production controls described above and to "insure" that United States consumption of the regulated chemicals is reduced on the same schedule as production. Section 601(b) defines consumption as production plus imports minus exports to nations which are Parties to the Montreal Protocol.

Section 607 requires EPA to promulgate within 10 months of enactment rules "providing for issuance of allowances" for production and consumption of class I and II substances and governing the transfer of such allowances. The transfer rules are to require that each trade result in less overall production or consumption than would have occurred absent the trade.

Section 604(d) authorizes EPA to permit, after notice and opportunity for comment, production in excess of the limits for export to, and use in, developing countries that are operating under article 5 of the Protocol. Like the Protocol, section 604(d) provides that such excess production must be solely for the purpose of supplying the basic domestic needs of such countries.

Section 616 requires EPA to promulgate within two years of enactment regulations authorizing trades of allowable levels of production with other Parties to the Protocol. The regulations are to require, among other things, that trades do not result in more production than would have otherwise occurred.

Finally, section 614(b) addresses the relationship between the statute and the Protocol, stating that "in the case of conflict between any provision of this title and any provision of the Montreal Protocol, the more stringent provision shall govern." It also provides that the title "shall not be construed, interpreted or applied to abrogate the responsibilities of the United States to implement fully the provisions of the Montreal Protocol."

III. Classification and Grouping of Chemicals

As noted above, EPA in January published the lists of ozone-depleting substances required by section 602 (56 FR 2420). The lists serve as the first building blocks for implementing Title VI. The lists classified and grouped ozone-depleting substances as follows:

A. Class I

Class I substances contained in the list are the same as those listed in Annexes A and B of the London Amendments to the Montreal Protocol.

1. Group I—CFCs

Class I/Group I substances include CFC–11, –12, –113, –114 and –115 and their isomers. These are the five CFCs originally restricted by the Montreal Protocol and by EPA's August 12, 1988 final rule implementing the Protocol. These fully-halogenated substances currently have many commercial uses, including refrigeration, solvents, and foams.

2. Group II—Halons

Class I/Group II includes halon–1211, –1301 and –2402 and their isomers. These are the three halons originally restricted by the Montreal Protocol and by EPA's August 12, 1988 final rule. Halons are brominated compounds used primarily as fire-extinguishing chemicals. While on a molecule-per-molecule basis, the Group II substances are much more damaging to the ozone layer than the Group I substances, the total emissions of halons have been significantly less than those of CFCs.

3. Group III—Other CFCs

In class I/Group III are CFC–13, –111, –112, –211, –212, –213, –214, –215, –216 and –217. Like Group I substances, these substances are fully-halogenated. However, in the past they were not produced in large amounts, if at all, and were not included in the initial restrictions of the Montreal Protocol. CFC–13 and –112 are currently produced or used in very small amounts in the United States. Others in this group have never been commercially available.

4. Group IV—Carbon Tetrachloride

Class I/Group IV includes only carbon tetrachloride. Carbon tetrachloride was used extensively in the United States as a solvent and grain fumigant, and is still used in this capacity in many parts of the world. However, its high toxicity led to a ban of its use in the United States in most dispersive applications. Its primary use in the United States today is as a feedstock for the production of CFCs.

5. Group V—Methyl Chloroform

Class I/Group V includes only methyl chloroform (1,1,1-trichloroethane) and excludes its isomer, 1,1,2-trichloroethane which has a very low ODP and was also exempted from control under the Montreal Protocol. Methyl chloroform is widely used throughout the world as an industrial solvent. Unlike the other class I substances, it is only partially halogenated and correspondingly has a much lower ODP, but because of its high volume of use, it contributes significantly to total atmospheric chlorine levels.

B. Class II—HCFCs

The list of class II substances specified by Congress corresponds to Annex C of the London Amendments to the Montreal Protocol and includes HCFC–21, –22, –31, –121, –122, –123, –124, –131, –132, –133, –141, –142, –221, –222, –223, –224, –225, –226, –231, –232, –233, –234, –235, –241, –242, –243, –244, –251, –252, –253, –261, –262 and –271 and their isomers. As stated earlier, because the class II substances are only partially halogenated, their ODPs are significantly lower than those of the class I substances. Only HCFC–22 is widely used in the United States today. Others, including –123, –124, and –141b, are currently being tested as potential interim substitutes for CFCs in many uses.

EPA considers the HCFCs to be transitional substances which are critical to the full phase-out of CFCs. HCFCs are being developed as first generation substitutes for class I substances. At the same time, because HCFCs do add chlorine to the stratosphere, their production and use is restricted will and eventually be phased out under section 605 of the Act. The primary role of HCFCs will be as a bridge to facilitate the quick elimination of the more harmful CFCs. The United States as well as other Parties signed a non-binding resolution in London in June, 1990 calling for the use of transitional substances only where other alternatives are not feasible, with a phase-out to occur no later than 2040, bv 2020 if feasible.

IV. Temporary Final Rule

On March 6, 1991 (56 FR 9518), EPA published temporary regulations to implement the 1991 limits on the production and consumption of ozone-depleting chemicals required by section 604 of the Act. The regulations took effect as of January 1, 1991, and are to remain in effect only during 1991. They will be replaced by the regulations EPA is proposing today.

The temporary final rule revised EPA's regulations implementing the Montreal Protocol as needed to implement the 1991 production and consumption limits under section 604 in a manner consistent with the United States' obligations under the Protocol. While the 1991 reduction requirements established by Title VI are in many ways similar to those promulgated in August 1988 by EPA to implement the Montreal Protocol, they differ in several important respects. Some of these differences were resolved by the temporary final rule as described below:

First, sections 602 and 604 together expand the universe of chemicals being regulated to include all fully halogenated CFCs, carbon tetrachloride and methyl chloroform. Section 604 also speeds up the reduction schedule for CFCs and halons and establishes a reduction schedule for the newly regulated chemicals. Specifically, for calendar year 1991, production and consumption of all fully-halogenated CFCs and halons is to be reduced to 85 percent of baseline levels, and production and consumption of carbon tetrachloride and methyl chloroform is to be frozen at baseline levels.

The temporary final rule accordingly expanded the coverage of the original regulations by apportioning to companies baseline allowances for those chemicals not previously regulated but subject to reduction requirements under section 604 of the Act (i.e., CFC–13, –111, –112, –211, –212, –213, –214, –215, –216, and –217, carbon tetrachloride and methyl chloroform). Baseline allowances were apportioned based on each company's level of production and import of those chemicals in 1989. The rule then allocated companies 100 percent of their baseline allowances for

carbon tetrachloride and methyl chloroform and 85 percent of their baseline allowances for all the regulated CFCs and halons for 1991. It also added record-keeping and reporting requirements needed to determine compliance with the limits on newly regulated chemicals.

Second, section 604 provides that the reduction requirements are to be accomplished over the course of the calendar year instead of the July 1 to June 30 control period defined under the original Montreal Protocol and implemented by EPA's regulations. While, as noted previously, the Protocol Parties decided to shift to calendar control periods, they decided to accomplish the shift by retaining the current control period of July 1, 1990 to June 30, 1991, and extending the next control period to 18 months from July 1, 1991 to December 31, 1992.

To reconcile the difference in control periods between the Act and the Protocol for 1991, the temporary final rule ended the then current control period on December 31, 1990 and established a new control period that coincides with the 1991 calendar year. However, to ensure that the United States continued to meet its international commitments under the Montreal Protocol, it specified that Group I (CFCs) baseline allowance holders could not use in the six-month period from January to June 30, 1991 more than the unexpended allowances held at the end of December, 1990 and any additional allowances received during the following six months.

Third, EPA's regulations had provided that additional consumption allowances could be obtained upon proof of exports to *any* country prior to 1993, since the Protocol permitted any exports to be subtracted in calculating a Party's consumption before that date. However, section 601(6) of the Act defines consumption as production plus imports minus exports to Parties only. The temporary final rule therefore revised EPA's regulations to provide that additional consumption allowances will be granted only for exports to Parties.

Aside from these specific changes and additions, the temporary final rule left in place the apportionment of baseline allowances for calculated levels of CFC–11, –12, –113, –114, and –115 as a group and halon–1211, –1301 and –2402 as a group, as set forth in the August 12, 1988 regulations. It did not materially change the provisions governing trades of allowances or acquisition of additional production allowances, either upon receipt of production rights from other countries which are Parties to the Montreal Protocol or upon proof of export to developing country Parties to the Protocol. Nor did it provide for reductions in production and consumption beyond 1991. These and other aspects of the regulations, however, are reconsidered in the context of today's proposed rulemaking to implement sections 604, 607 (regarding trade between pollutants and between manufacturers) and 616 (regarding trades with other countries).

V. Proposed Amendments to the Regulations

A. Definitions

1. Production

Section 601 of the Clean Air Act defines "production" somewhat differently than that term is defined in the Protocol and EPA's implementing regulations. "Produce," "produced" and "production" are defined in section 601(11) as the "manufacture of a substance from any raw material or feedstock chemical, but such terms do not include: (a) The manufacture of a substance that is used and entirely consumed (except for trace quantities) in the manufacture of other chemicals; or (b) the re-use or recycling of a substance." The Protocol's definition differs in that it does not include the parenthetical "(except for trace quantities)" and it also excludes from production the amount of controlled substances that have been destroyed by methods approved by the Parties.

EPA believes that neither difference in definition makes a difference in fact. The parenthetical added to section 601's definition is no more than a recognition of the physical law that a chemical reaction is never 100 percent efficient. In other words, it is a physical impossibility for a chemical to ever be entirely consumed in the manufacture of another chemical. Because this is the case, EPA believes that the substance of the parenthetical is implicit in the Protocol's definition. Accordingly, EPA proposes to revise its definition of production to match that in section 601, including the addition of the parenthetical.

While the Protocol allows production that has been destroyed using methods approved by the Parties to be excluded from the calculation of production, the Parties have yet to approve any such methods. Accordingly, EPA's current regulatory definition of production does not exclude destroyed production, and so no change is necessary to reflect section 601's failure to exclude destroyed production.

At the same time, the conference report on the 1990 Amendments suggests that EPA consider whether an exclusion for destroyed production should be allowed on a case-by-case basis for the manufacture of controlled substances that are (1) coincidental, unavoidable by-products of a manufacturing process and (2) immediately contained and destroyed by the producer using maximum available control technologies or with certain production process. The Agency is aware that carbon tetrachloride can be a coincidental, unavoidable by-product in the production of such chemicals as methylene chloride and methyl chloroform. A company that sells coincidentally-produced carbon tetrachloride would appropriately be subject to the regulations proposed today. However, the Agency is aware that several companies do indeed destroy carbon tetrachloride that has been produced as a byproduct in the production of other chemicals.

As noted above, the Montreal Protocol provides for the exclusion of production of controlled substances that are subsequently destroyed by technologies approved by the Parties. However, the Parties have yet to approve any destruction technologies, and so no exemptions are allowed. For the United States to remain in compliance with the Protocol, EPA may not exclude from the Protocol's production limits destroyed substances subject to these limits. However, the Protocol's limits on the newly regulated substances do not take effect until 1993, and its annual limits on controlled substances are generally less stringent than the Clean Air Act's until the substances are phased-out. Exemptions for destroyed substances may thus be provided consistent with the Protocol so long as the exemptions do not amount to more than the difference between the production amounts allowed by the Clean Air Act and those allowed by the Protocol.

The Agency is concerned about defining destruction technologies that have not been approved by the Parties or allowing technologies now that may not be accepted by the Parties at a later date. Notwithstanding this, EPA believes that it would be appropriate to exempt at least carbon tetrachloride that is a coincidental, unavoidable by-product of a manufacturing process and that is immediately contained and destroyed by the producer. The Agency is concerned that there may be a large number of companies that coincidentally produce and then destroy carbon tetrachloride, and that the control of such coincidentally-produced carbon tetrachloride through the proposed allowance system would be unworkable. The issue becomes more

problematic with the eventual phase-out of carbon tetrachloride. If an exemption for destruction is not allowed, then companies would be forced to eventually alter their production processes that produce the carbon tetrachloride as a by-product.

In light of the conference report language described above, EPA is proposing that carbon tetrachloride that is a coincidental, unavoidable by-product of a manufacturing process be excluded from production if it is "immediately contained and destroyed" by "maximum available control technologies." The exclusion would be available only for that amount of carbon tetrachloride equal to the difference between the amount of carbon tetrachloride allowable under the Protocol and that allowable under section 604(a). EPA proposes that use of the exclusion be available on a first-come, first-served basis. EPA requests comments on the criteria EPA should apply to judge when carbon tetrachloride is a coincidental, unavoidable by-product in any given instance or what processes produce carbon tetrachloride as such a by-product. The Agency is also interested in comments on whether and what other controlled substances may warrant similar treatment and how use of any exclusion should be allocated to ensure that the United States remains in compliance with the Protocol's limits.

The Agency also requests comments on how the phrase "immediately contained and destroyed by the producer" should be interpreted and implemented. The language is not clear as to how long the substance may be stored before it must be destroyed, and whether it may be transported off-site so long as it is owned by the producer. The Agency is concerned that a long storage period may increase the risk of leakage. EPA proposes a maximum 90-day storage period, which is consistent with current Resource Conservation and Recovery Act (RCRA) rules controlling the storage of hazardous waste. The Agency also proposes to allow the controlled substance to be transported off-site provided that the producer retains ownership of the shipment through the manifest system currently in place under RCRA. EPA believes that there may be a large number of small producers who may ship hazardous wastes to off-site incinerators. The Agency requests comments on whether the producer must destroy the controlled substance on-site of off-site.

Finally, EPA notes that under RCRA regulations, carbon tetrachloride must be disposed as a hazardous waste by incineration at facilities that have 99.99 percent destruction efficiency ratings, and that these incinerators are limited to no more than four pounds per hour of hydrochloric acid (HCl) emissions, or they must reduce the HCl emissions by 99%. The Agency proposes this technology as the maximum available control technology for the destruction of carbon tetrachloride. It requests comments on whether this is a suitable maximum available control technology for carbon tetrachloride, and whether other technologies should be considered for it or other chemicals.

2. Transformation

Because transforming a substance has the effect of destroying it, there is a possible conceptual overlap between transformation, which is excluded from the calculation of production, and destruction, which is not. The Agency believes that the two are appropriately distinguished based on whether the manufacture of another chemical is involved. If the controlled substance "expires" in the manufacture of another chemical and that other chemical serves a commercial purpose (e.g., as an end product that is sold or one that is used as an intermediary in the production of another chemical), then the controlled substance is transformed and not destroyed. If, on the other hand, the "expiration" of the controlled substance results in the creation of another chemical that is a waste product, it is destroyed and not transformed. To codify this distinction, the Agency proposes to define transformation as "the manufacture of a substance that is used and entirely consumed (except for trace quantities) in the manufacture of other chemicals for commercial purposes."

3. Consumption

The term "consumption" is defined in section 601(6) as the quantity of a controlled substance produced in the United States, plus the quantity imported, minus the quantity exported to Parties to the Montreal Protocol (see Appendix B to part 82). The Protocol's definition differs in that it does not limit the exports that may be subtracted to those shipped to Protocol Parties. However, article 3 of the Protocol provides that beginning on January 1, 1993 only exports to Parties can be subtracted in calculating consumption. The CAA and the Protocol thus differ in their approach to consumption only in terms of the timing of the restriction on what exports can be subtracted from the calculation.

Which definition of consumption is more "stringent" depends on the context. For purposes of determining compliance with the consumption caps, the CAA definition is more stringent, since it restricts the exports that can be subtracted from the total of production and imports beginning in 1991. For purposes of determining baseline consumption allowances, the Protocol definition is more stringent for the reasons given in the section discussing baseline allowances below. EPA therefore proposes to revise its regulatory definition of consumption to specify that for purposes of determining compliance with the limits on consumption, only exports to Protocol Parties will be counted.

4. Controlled Substance

The current regulatory definition of "controlled substances" is based on the Protocol's definition of that term. The current regulations state that a controlled substance is "any substance listed in Appendix A to this Part, whether existing alone or in a mixture, but excluding any such substance or mixture that is in a manufactured product other than a container used for the transportation or storage of the substance or mixture. Any amount of a listed substance which is not part of a use system containing the substance is a controlled substance. If a listed substance or mixture must first be transferred from a bulk container to another container, vessel, or piece of equipment in order to realize its intended use, the listed substance or mixture is a controlled substance." Title VI has no counterpart definition. Because section 614 provides that EPA must interpret and implement title VI in a manner consistent with the Protocol, the Agency proposes to use the same definition to refer to class I chemicals.

EPA considers a bulk container to be one that serves to transport the chemical and is not used directly in the application of the chemicals or as part of a "use system." Isotanks used for transporting large volumes of these chemicals are clearly bulk containers, as are 50-gallon drums and pressurized cylinders. Conversely, a refrigerator that contains CFC–11 in its foam insulation and CFC–12 as its refrigerant is not a bulk container; instead, it is considered to be a product. Obviously, the refrigerator does not simply store these chemicals but uses them to refrigerate food. Thus, for purposes of these regulations, imports and exports of controlled substances refer to imports and exports of controlled substances within bulk containers, not to products that contain or have been manufactured with controlled substances.

It should be also emphasized that the Parties agreed that used or recycled controlled substances were considered bulk chemicals if either imported or exported. Consumption allowances are expended for import of used or recycled controlled substance and allocated for export of controlled substances.

5. Import

The Agency proposes that its current regulatory definition of import be retained, as it tracks the statutory definition. EPA, however, wants to take this opportunity to explain its application of that definition in two contexts. One, the Agency has determined that ship servicing companies are not required to obtain consumption allowances before off-loading (i.e., importing) either used controlled substances or excess controlled substances of United States origin. EPA believes that it would be inconsistent to not grant consumption allowances for controlled substances taken aboard ships to service on-board use systems while at the same time requiring companies to expend consumption allowances when the controlled substances are off-loaded. Therefore, as long as the controlled substances are employed within a ship-board use system and are subsequently brought ashore they need not be reported as imports.

Two, under the Maquiladora Accord (the Accord) between the Republic of Mexico and the United States, affiliated production facilities or plants ("Maquiladora twins") on either side of the border may transfer materials and products to one another without being subject to customs duties or taxes. The Agency has previously determined that controlled substances that are shipped to and from the Republic of Mexico under the auspices of the Accord need not be reported as imports and exports. The Agency found that a large number of firms on the border operate under the agreement, and that what is exported to Mexico under this agreement (generally CFC–113 solvents) is returned to the United States. Much of this is returned as spent solvent. Companies which engage in trade with Mexican facilities under the Accord must retain the appropriate documentation for the controlled substances and be prepared to submit proof that the transactions were conducted under the purview of the Accord. Finally, shipments to Mexico under the Accord may not be used to obtain consumption allowances for exports to Parties.

B. Newly Regulated Chemicals

Section 604, as previously described, requires reductions in the production and consumption of all class I chemicals, which section 602 defines as the fully halogenated CFCs, halons, carbon tetrachloride and methyl chloroform. The five most ozone-depleting CFCs and the halons are already covered by EPA's regulations implementing the Protocol. The Agency is therefore proposing to expand the coverage of its regulations to include the "other" fully halogenated CFCs, carbon tetrachloride and methyl chloroform.

C. Baseline Allowances

Section 604 requires that each company limit its level of production and consumption of each class I substance to specified percentages of that company's production and consumption of that substance in the applicable baseline year. Section 607 requires that EPA issue production and consumption allowances for class I and class II substances in accordance with the reduction requirements of section 604. Read together with section 604, section 607 thus provides for company- and chemical-specific production and consumption allowances for class I and class II substances.

EPA today proposes apportionments of company- and chemical-specific allowances for class I substances but reserves the apportionment of class II allowances until a later date. Under section 604, class I substances are subject to already applicable reduction requirements. Limits on class II substances, on the other hand, are not applicable until 2015. Furthermore, many of the class II substances do not even exist yet; the class II substances listed in section 603 include all the hydrochlorofluorocarbons that conceivably could be developed, not only those that have been developed. Beyond that, Congress left to EPA the specification of the baseline year for those substances.

For the same reasons that EPA has not selected a baseline year, the Agency is not proposing to issue class II allowances here. For the HCFCs that do not yet exist, a baseline year cannot be chosen nor allowances granted. For the HCFCs that do exist, more time is needed for them to be integrated into the marketplace so that EPA can determine a representative base level of their production and consumption. Producers and importers of newly developed HCFCs may drastically alter their production and importation of these chemicals in response to developing market demand. Neither selecting a baseline year nor issuing allowances makes sense when production and import levels of these chemicals is still in such flux. Accordingly, EPA is proposing regulations that simply reserve the apportionment of allowances for class II substances.

EPA's current regulations apportioning allowances for class I substances are consistent with the company-specific approach of sections 604 and 607. As described earlier, those regulations apportion baseline production and consumption allowances to each company that produced or imported controlled substances in the baseline year. Each company's apportionment is based on the level of its production, imports and/or exports in the baseline year. EPA proposes to implement section 604 and 607 by similarly apportioning baseline allowances to companies based on their base year levels of production, imports and exports.

EPA's current regulations are not consistent with the chemical-specific approach of section 604 and 607, however. The Agency accordingly proposes to apportion baseline allowances not for calculated levels of Group I or Group II controlled substances, but for each controlled substance that a company produced, imported or exported in the base year.

EPA collected data under the authority of Clean Air Act section 114 on the production, import and export of Group I and Group II controlled substances in 1986, the baseline year for those substances (December 14, 1987; 52 FR 47486). The Agency used these data to establish in its 1988 final rule baseline production and consumption allowances for each company. More recently, EPA collected data under section 114 on the production, import, export and transformation of Group III, Group IV and Group V controlled substances in 1989, the baseline year for those substances (November 26, 1990; 55 FR 49116). EPA used these data in its temporary final rule baseline allowances for the chemicals added by section 602 (March 6, 1991; 56 FR 9518).

Using the data described above, the Agency calculated for today's proposal each company's baseline allowances for each chemical subject to section 604 reduction requirements. EPA calculated the allowances in the same manner as it calculated the baseline allowances in the current regulations, except that it calculated allowances for each chemical rather than for groups of chemicals. (For a detailed description of the EPA's calculation of allowances, see 56 FR 9518.)

In the case of production allowances, EPA took into account that section 601(11), like the Protocol, defines production as excluding controlled substances transformed into other substances or recycled or reused. As a result, the Agency deducted from a company's baseline year production the amount of production that was transformed or that was produced from used or recycled controlled substances.

In the case of baseline consumption allowances, EPA calculated each company's production plus imports minus exports of a controlled substance. Since section 601 defines consumption as production plus imports minus exports to Protocol Parties, it would appear that only exports to Protocol Parties should be subtracted in calculating baseline allowances. However, such an approach to calculating baseline consumption allowances is not literally possible in the case of many controlled substances and does not make sense in the case of any substance. Baseline allowances reflect a company's level of production, imports and exports in the base year. In the case of Group I and Group II substances (the originally regulated CFCs and halons), the base year is 1986. Since the Protocol did not enter into force until 1988, there could be no Protocol Parties in 1986. The base year for the other substances is 1989. While the Protocol was in force by then, nations have continued to join the Protocol since. There is no apparent reason why a company's baseline should be calculated according to which nations happened to be Protocol members in 1989.

Moreover, such an approach to calculating baseline consumption would be inconsistent with the Protocol. The effect of limiting the exports that can be subtracted from consumption for the purpose of determining baselines is to increase baseline consumption. In short, if the Agency applied the section 601 definition of consumption to its calculation of baseline consumption, it would arrive at a higher consumption level than the Protocol would permit. Section 614 of the CAA provides that the terms of title VI shall not be construed in such a way as to abrogate the United States' obligation to fully implement the Protocol. EPA therefore calculated baseline consumption by subtracting from a company's production and imports all of its exports in the base year.

Beyond that, the Agency adjusted the company's baseline to account for two possible shortfalls, if warranted for that company or that chemical. One type of adjustment was necessary to account for the fact that the consumption equation for some companies yielded a negative number. (A company could have negative consumption allowances if it exported more than it produced and imported.) EPA does not believe it would be appropriate to apportion companies negative baseline consumption allowances, because such allowances would essentially require the companies receiving them to continue exporting the particular substance forever. There is no indication that Congress intended the allowance system to force companies to stay in the business of exporting controlled substances. At the same time, section 604(c) requires that EPA's regulations insure that the United States' consumption of class I substances is reduced according to the same schedule applicable to production. (The Protocol's reduction requirements also apply to national consumption.) Since the United States' consumption is the sum of individual companies' consumption, any company's negative baseline consumption must be factored into the calculation of baseline consumption allowances. EPA thus took account of companies' negative baselines by reducing baseline consumption allowances of both producers and importers with a positive balance of such allowances in proportion to each company's market share of the particular chemical.

EPA similarly adjusted baseline consumption allowances to account for the fact that not all exports of a chemical are attributable to a particular company. These unattributable exports must also be taken into account in calculating the United States' baseline consumption. As it did in the case of consumption allowances for the already regulated chemicals, EPA spread the unattributable exports among companies known to have produced and imported the chemical in the baseline year according to their relative market share. The Agency requests comments on its proposed approach to calculating baseline allowances.

As discussed previously, EPA promulgated production and consumption allowances for the group of the five most potent CFCs and the halon group in its 1988 rule. Today the Agency is proposing chemical-specific allowances for those substances that, when aggregated on an ODP-weighted basis, are equal to the calculated level of allowances promulgated in 1988. The Agency issued a final rule in 1987 requesting data on Group I and II substances for the purpose of determining 1986 baseline levels, the relevant baseline here. Moreover, the EPA included in the rule a provision that failure to submit the required information by the specified date would invalidate future claims to allowances. EPA completed the rulemaking on the allocation of Group I and II allowances on August 8, 1988. Against this backdrop, EPA does not believe it necessary or appropriate to reopen the baseline for these chemicals in this rulemaking. However, the Agency will continue to accept additional data for Groups III, IV and V during the notice and comment period. However, once baselines for these groups are promulgated, the Agency will not accept further baseline data. This is the approach that the Agency took to allowances for Groups I and II chemicals. EPA has provided over six months for companies to submit data for Groups III, IV and V.

D. Reduction Schedule

Section 604(a) states that effective January 1 of each year it shall be unlawful for any person to produce any class I substance in an annual quantity greater than a specified percentage of their base year production. The specified percentages are as follows:

Date	Group IV (percent)	Group V (percent)	Other class I substances (percent)
1991	100	100	85
1992	90	100	80
1993	80	90	75
1994	70	85	65
1995	15	70	50
1996	15	50	40
1997	15	50	15
1998	15	50	15
1999	15	50	15
2000	0	20	0
2001	0	20	0
2002 and after	0	0	0

Section 604(b) adds that effective January 1, 2000 (January 1, 2002 in the case of methyl chloroform), it shall be unlawful for any person to produce any amount of a class I substance.

The schedule for phasing-out class I substances reproduced above is more stringent than that of the amended Montreal Protocol. As noted above, section 614(b) of the Act states that in the case of any conflict between the Clean Air Act and the Montreal Protocol, the more stringent provision shall govern. EPA therefore proposes to amend its current regulations to allocate decreasing amounts of baseline production and consumption allowances

in accordance with the section 604 phase-out schedule.

E. Shift in Control Periods

Control periods under section 604 coincide with the calendar year. In 1991 and 1992, production and consumption of Group I and Group II substances (CFCs and halons) are limited to 85 percent and 80 percent, respectively, of 1986 baseline levels. Under the overlapping Montreal Protocol control periods, production and consumption are limited to 100 percent from July 1990 through June 1991 and 150 percent from July 1991 through December 1992, of 1986 baseline levels.

As explained above, the temporary final rule ended the then current control period on December 31, 1990 and established a new control period for 1991 during which the section 604 reduction requirements for that year applied. To ensure that the Protocol's July 1990 through June 1991 freeze requirement was met, the temporary final rule also prohibited production and import during the period of July 1990 through June 1991 from exceeding 100 percent of 1986 levels, except to the extent companies received additional allowances during this period through trading, exports or international transfers.

EPA proposes today to similarly safeguard against noncompliance with the Protocol's 150 percent cap for July 1991 through December 1992. If companies produced and consumed controlled substances at a steady rate throughout a control period, no safeguard would be necessary: 42.5 percent of baseline levels (half of the 85 percent allowed under the Act for 1991) would be produced and consumed between January and June and 42.5 percent between July and December. When added to the 80 percent of baseline levels permitted by section 604 for 1992, the maximum production and consumption during the 18-month Protocol control period would be 122.5 percent of 1986 levels—well within the 150 percent cap prescribed by the Protocol.

However, seasonal shifts in production and consumption related to both weather and market patterns may occur. As a result, it is possible to envision a scenario where a company might use most or all of its allowances under section 604 for 1991 to produce or consume after July 1, 1991. For example, a company might produce over 70 percent of its available 85 percent after July 1, 1991 and produce its full 80 percent in 1992; in that case, the company would exceed 150 percent of its baseline level over the Protocol's 18-month control period. If this were to occur, a company could place the United States in jeopardy of being out of compliance with the Montreal Protocol.

In order to ensure that the United States complies with the Protocol's 18-month 150 percent control period, EPA is proposing to prohibit any company from exceeding more than 150 percent of its baseline production and consumption of Group I (CFCs) substances from July 1, 1991 through December 31, 1992, except to the extent the company has received allowances authorizing additional production or consumption through intercompany trading, exports to Parties, and transfers of allowable production from other Parties. This prohibition would be in addition to the existing prohibition against any person producing or importing controlled substances in excess of the unexpended production and consumption allowances held by that person.

F. Exemptions

EPA's current regulations implement the Protocol provisions allowing a Party to exceed its production cap by a specified amount to the extent it exports controlled substances to a developing country operating under article 5 of the Protocol or receives allowable production from another Protocol Party. The Protocol does not permit exceedences of the applicable caps under any other circumstances.

Like the Protocol, sections 604(e) and 616 of the CAA permit exceedences of the section 604(a) reduction requirements for exports to developing country Parties and transfers from other Protocol Parties. Those sections place conditions on such exceedences that are similar, although not in all cases identical, to those found in the Protocol. EPA's implementation of these authorizations to exceed production limits is discussed in a later section of this notice.

Sections 604 (d), (f), and (g) of the CAA provide for additional exemptions from the phase-out requirements of section 604, to the extent such exemptions are consistent with the Montreal Protocol. Section 604(d)(1) allows the Administrator to authorize production of methyl chloroform for three years after the deadline for its phase-out (January 1, 2002) for uses of that chemical which have no safe and effective substitutes and which are considered essential. Section 604(d)(2) provides that any class I chemical may be produced after the phase-out deadline (January 1, 2000 for all chemicals except methyl chloroform) for use in medical devices if the Federal Drug Administration finds such use to be necessary.

Section 604(d)(3) exempts the halons from the phase-out requirement for purposes of aviation safety if EPA and the Federal Aviation Administration find an absence of safe and effective substitutes. Section 604(f) authorizes the President to exempt the halons and CFC–114 from the phase-down and phase-out requirements for purposes of protecting national security where there is no adequate substitute. Finally, section 604(g) provides exemptions from the phase-down and phase-out requirements for specified halons if they are to be used for fire or explosion prevention and no safe and effective substitute is available. EPA is required to monitor the availability of substitutes for these chemicals, including any analysis done on substitutes and essential uses under the Montreal Protocol (section 603(g)(2)). Reports to Congress are required in 1994 and 1998. After December 31, 1999 these exemptions may not be granted except in association with domestic crude oil/natural gas production on the North Slope of Alaska, and no company's production may exceed 3 percent of its production in the baseline year as a result of this more limited exemption (section 604(g)(3)).

EPA is not now proposing to implement these exemptions, which are found in the CAA but not the Protocol. Most of the CAA exemptions are from the January 1, 2000 phaseout deadline which the Protocol either already contains (in the case of the adjusted CFC and halon reduction schedules) or will contain once the London Amendments enter into force (in the case of carbon tetrachloride and the other CFCs). The Protocol, though, does not, and will not under the London Amendments, contain similar exemptions. (The Amendments will provide that the Parties may agree to exemptions from the phase-out for halons, but the Parties have yet to agree to any such exceptions.) Consequently, EPA cannot implement these CAA exemptions since to do so would be inconsistent with the Protocol.

In contrast, the Clean Air Act exemptions from the phase-down requirements for certain halons (section 604(g)) and the phase-out requirement for methyl chloroform (section 604(d)(1)) could be implemented to some extent without running afoul of the Protocol. The section 604 phase-out schedule includes interim reductions more stringent than, and a phase-out date for methyl chloroform earlier than, what is required under the Protocol. As a result,

for those years during which the Clean Air Act requirements are more stringent than the Protocol's, EPA could implement the exemptions noted above to the extent that the Protocol's requirements are still met. However, the Agency is not proposing to implement any of these exemptions in this rulemaking. EPA believes that it would be premature at this time to specify exceptions to the methyl chloroform phase-out requirement which are not scheduled to occur for another 11 years. Technological progress related to the development of substitutes is occurring at a rapid rate, and EPA cannot make the necessary findings now to justify such exemptions. As for the exemptions from interim reduction requirements as they apply to certain halons, EPA does not believe there is a need for any exemptions in the near term, since production has decreased dramatically in response to conservation techniques and measures used by industry. EPA does request comments and suggestions on how these exemptions could be implemented in the future, how the Agency can ensure consistency with Montreal Protocol requirements, and what procedures should be used for evaluating and granting them.

G. Record-keeping and Reporting Requirements

Section 603(a) requires EPA within 270 days of enactment to amend its current record-keeping and reporting requirements to collect specified information on class I and class II controlled substances. The regulations must include requirements with respect to the time and manner of monitoring and reporting.

Section 603(b) provides for ongoing reporting of production, import and export levels of class I and class II substances. (While the statute does not impose controls on the production and consumption of class II substances until 2015, other provisions of section 603 require that EPA monitor and report to Congress on the production, consumption and use of HCFCs. The London Amendments to the Protocol likewise require monitoring of HCFCs.) Specifically, that subsection states that quarterly, or not less than annually as determined by EPA, each person who produced, imported, or exported a class I or class II substance must file a report with the Agency stating the amount of the substance that was produced, imported, and exported by it during the preceding reporting period.

Section 603(c) provides for reporting of production, import and export levels in the baseline years. It states that, unless such information has previously been reported to EPA, each person who produced, imported or exported a class I or class II substance in the baseline year must submit along with the first report due under section 603(b) information on the level of its activities in the baseline year. As noted earlier, every person who is entitled to baseline allowances for class I substances has been required to submit these data already.

In the case of substances added to the class I or class II lists after the lists are initially published, EPA's regulations are to require that each person submit within 180 days of the substance being listed its production, imports and exports of that substance in the baseline year. The Agency requests comments on how a baseline year for a newly listed class I or class II chemical should be selected.

EPA is proposing to implement section 603(b) by expanding the coverage of its current recording-keeping and reporting regulations to include the newly regulated class I substances and by also requiring annual reports of the class II substances. In developing reporting requirements for its 1988 regulation for the already regulated class I substances, the Agency examined the issue of reporting frequency and determined that quarterly reports of both production and importation were needed. Since the United States' compliance with the Protocol's requirements depended on companies' compliance with their individual limits, it was important for EPA to monitor compliance closely enough so that violations could be detected early and the effects remedied or at least mitigated. Quarterly reports also allowed EPA to track companies' allowance accounts for the purpose of determining whether any particular company had sufficient allowances to cover a proposed trade. The Agency considered that annual reporting of these activities would not permit early detection and that monthly reporting was burdensome both to industry and to EPA without providing sufficiently greater safeguards against exceedences.

In implementing section 603, the Agency must still consider the United States' ongoing obligations under the Protocol to control class I substances. For the reasons given in support of the 1988 rule and described above, EPA proposes that quarterly monitoring reports continue to be required for all class I substances. As for class II substances, on the other hand, neither the Protocol nor the CAA imposes any control requirements on HCFCs in the near term. HCFC reporting requirements are instead needed for reports due to Congress every three years and due to the Protocol Secretariat every year. For these purposes, the Agency believes that annual reporting of HCFC production, imports and exports is sufficient.

As explained in another section of this notice, today's proposed rules provide that exporters may claim additional allowances only for exports to Parties to the Protocol. EPA proposes that exporters be allowed to report their exports any time during a control period in order to claim additional consumption allowances. However, since the Agency must report all exports to the Secretariat of the Protocol, any exporter of class I chemicals who has not already reported all of their exports during the control period must report them within 45 days of the end of the control period.

As for baseline year reports, the information required under section 603(c) for currently listed class I substances has already been obtained by EPA. Therefore, there is no need for regulations implementing that subsection with respect to those chemicals. As for class II substances, until the Agency specifies a baseline year, reports of baseline year production, imports and exports cannot be submitted. When the Agency specifies a baseline year or years for those substances, it will issue an information request for the required information.

EPA is proposing regulations to implement the subsection with respect to later listed substances. As required by section 603(c), the proposed regulations provide that within 180 days of EPA adding a substance to the class I list and specifying a baseline year for that substance, each person that produced, imported or exported that substance in the baseline year must report the levels of its activities in that year.

H. Exchanges

For the 1991 CAA control period only, EPA revised the trading provisions of its regulations only to the extent necessary to reflect the changes in chemical coverage and control periods under section 604. The Agency is today proposing revised trading rules to conform to the requirements of section 607 for 1992 and for all following control periods.

Section 607 provides for trading between chemicals (since section 604 requires that *each* class I substance be reduced according to the specified schedule) and between persons. Trades between chemicals are to reflect the chemicals' relative ODP. To illustrate, assume a company having 100 baseline allowances for CFC–11 (with an ODP of

1) wants to produce CFC–113 (with an ODP of .8). It may trade its 100 CFC–11 allowances for 125 CFC–113 allowances, or it may obtain CFC–113 allowances from a company that holds such allowances.

Section 607 requires, however, that any trade must "result in greater total reductions in production in each year of class I and class II substances than would occur in that year in the absence of such transactions." In other words, the total number of allowances held after a trade must be less than the total number of allowances held before it. In the case of the trade described above, the company trading in its 100 CFC–11 allowances for CFC–113 would obtain less than 125 CFC–113 allowances. If it obtained the CFC–113 allowances from another company, the transferring company would have to reduce the number of allowances it held after the trade.

By contrast, EPA's current regulations do *not* provide for trades between chemicals, since the regulations allocate allowances for groups of controlled substances on an ODP-weighted basis, permitting producers and importers to change their mix of the chemicals within each group. The Agency's rules also do not require that trading result in greater overall reductions than would otherwise occur.

Section 607(c) sets forth three criteria any transferring company must meet in order to satisfy the requirement that its trade result in less total production or consumption: "the transferor of such allowances (must) be subject, under such rules, to an enforceable and quantifiable reduction in annual production which—

(1) Exceeds the reduction otherwise applicable to the transferor under this title,

(2) Exceeds the production allowances transferred to the transferee, and

(3) Would not have occurred in the absence of such a transaction."

The first criterion makes clear that any transfer is subtracted from the transferor's allowable production (which reflects the applicable reduction requirements), not from the transferor's baseline. The second criterion requires that the amount subtracted from the transferor's production be *more* than the amount transferred (the "offset"). The final criterion provides that the offset must result in reductions greater than what would have occurred otherwise. Under section 607(d) these same criteria apply to transfers of consumption allowances, as well.

Illustrating again with the hypothetical company described above, assume the company has only 100 CFC–11 allowances for the current control period. Although the ratio of the ODPs of CFC–11 and CFC–113 is 1:.8, when the company trades its 100 CFC–11 allowances, it obtains less than 125 CFC–113 allowances. How much less depends in part on whether the company would have used all of its 100 CFC–11 allowances in the absence of a trade. If there is reason to believe that the company would have used only 50 of its 100 allowances had the trade not taken place, the company would obtain from its trade less than 63 CFC–113 allowances. How much less depends on what offset factor EPA finds appropriate to apply to transfers generally.

Implementing the requirement that allowances be traded between chemicals on an ODP-weighted basis is straightforward and EPA proposes it here: The number of allowances for the chemical being traded is multiplied by the ODP of that chemical, and the product (in ODP) is then divided by the ODP of the chemical for which allowances are being sought. The quotient is the number of allowances for the chemical being sought that the trade can yield. In the case of the company described above, its 100 CFC–11 allowances would be multiplied by 1.0, since the ODP of CFC–11 is 1.0. The resulting 100 ODP-equivalents would then be divided by .8 (the ODP of CFC–113) for a result of 125 CFC–113 allowances.

How to implement the requirement that every trade result in less total production or consumption than what would have occurred otherwise is far less straightforward. The Amendments and their legislative history do not address how large the offset should be or how to determine what would have occurred otherwise. Both decisions are left to the Administrator's discretion.

In arriving at its proposed decisions, EPA first considered how to determine what would have occurred otherwise. One might assume that companies produce and import to the last kilogram permitted by the allowances they hold, in which case trading would not affect the total number of allowances used, only the type or ownership of those allowances. However, such an assumption is not borne out by EPA's experience implementing the current stratospheric ozone rules and other regulatory programs. In the first control period under the stratospheric ozone regulations, producers on average used only 77% of the allowances they held. High excise taxes and resulting high costs of controlled substances were one factor in apparently depressing demand to less than what producers could have supplied. The experience of other EPA programs, moreover, suggests that companies generally do not operate right up to the allowable limit, but instead operate short of it to allow for test-to-test or production variability. Building in a "margin of error" provides a company with insurance that when its tests show compliance with applicable requirements, EPA's tests will show the same.

Fulfilling the third criterion of an adequate offset thus seems to require that the Agency determine (1) how much companies would have produced or imported in the absence of a trade, and (2) what margin of error, if any, companies build into their compliance with the reduction requirements. As to the first determination, the Agency does not believe that it has or will have a sufficient basis for ascertaining how many allowances a company would have used if a trade did not occur. To make such a determination, EPA would have to predict the market demand for the chemical involved in the trade and the sensitivity to the market of the company proposing to trade. Predicting either would be extremely difficult to do, considering the many chemical- and company-specific factors that the Agency would have to weigh.

Predicting overall market demand for any particular chemical, for instance, would require analysis of the effect of the excise tax, consumer avoidance of ozone-depleting substances, forecasted summertime temperatures (since a hot summer would presumably drive up demand for CFC coolants), and the availability, price and safety of substitute chemicals, among other things. Predicting a company's response to the market would require analysis of that company's profit margins, marketing strategy, and contract obligations. Predictions, moreover, would have to be made quickly, as companies use trading at least in part to respond to changes in operations or market demand.

Notably, in the case of trades between Protocol Parties, Congress specified the basis for discounting trades to reflect any past decisions by companies to produce or import less than their allowable levels. Section 616(a)(1)(C) provides that the allowable production of the transferring Party be reduced to an amount equal to the average of the national production for the three years prior to the trade less the amount transferred, unless other specified calculations yield an even lower result. Thus, for example, to the extent United States companies produced less than allowed during the three years prior to an international trade, the total United

States allowable production would have to be reduced by the average amount they underproduced plus the amount transferred in the trade. Congress in this way used past production and consumption levels as a predictor of production and consumption levels in the future for discounting purposes.

Congress specified no such predictors of future production or consumption for the purpose of discounting domestic trades. EPA, moreover, does not believe it appropriate to extend Congress' approach to discounting international trades to domestic trades, because there is no assurance that a company in any particular year will produce no more (and no less) than it has on average in the preceding three years. Market demands and the company's situation could have changed from one year to the next. In addition, given the significant yearly reductions required under section 604, the average level of production for the preceding three years is likely to be more than the applicable allowable level for the current year.

Lacking a crystal ball or unlimited resources, the Agency is not equipped to predict what a company would have done if a trade did not occur. Moreover, EPA believes that as class I substances are phased down, demand for these substances will at least stay even with the shrinking supply, making it increasingly unlikely that companies will produce or import short of their allowable levels. The Agency therefore proposes to presume in calculating any offset that the transferring company would have used the allowances being transferred if the trade did not occur, unless EPA has clear evidence that the company would not have used the allowances absent the trade. EPA seeks public comment on ways it might evaluate whether allowances that companies propose to trade would have been used in the absence of such a trade.

By contrast, EPA does believe it has a basis for concluding that companies are likely to build in a small margin of error in complying with reduction requirements, and consequently proposes to include the amount of that margin in any offset. The Agency and industry have considered in past rulemakings the level of precision in measurements of ozone-depleting substances. An EPA-sponsored engineering analysis determined that production could be weighed to an accuracy of 0.1 percent through use of analytical scales with high standards of measurement accuracy. This analysis has been confirmed by producer inspections carried out to date that indicate that the production numbers reported by the producer (and verified by on-site inspections) are very accurate and could be as accurate as a fraction of a percent. Industry, on the other hand, argued in comments on the 1988 rule that a 2.0 percent margin was needed to account for equipment and human error.

Because demand was less than available supply for the first control period under EPA's regulations, companies produced and imported less than their allowances authorized. The production and consumption reports submitted to EPA therefore do not indicate what, if any, margin of error the companies would have built into their compliance strategy. Lacking any empirical evidence of what margin of error companies would choose to include, the Agency believes it appropriate to assume that companies will build in at least a 0.1 percent margin to guard against measurement error. Even though industry itself has argued that a 2.0 percent margin is appropriate for that purpose, EPA believes that the increasingly high value (as a result of shrinking supply) of class I substances will drive companies to be as accurate as possible in their measurements. In short, those companies that do not already possess the best available measurement equipment identified by EPA will likely acquire it. The Agency therefore proposes that the required offset be at least 0.1 percent of the total amount traded to account for companies' probable inclusion of a 0.1 percent margin to account for measurement error in complying with applicable requirements.

EPA is aware that auto makers generally build in a margin of error in complying with emission requirements to account for production as well as measurement variability. Since every vehicle is required to meet applicable standards, slight differences in production could result in vehicles with slightly different emissions. However, for producers and importers of ozone-depleting substances there is no need to build in a margin of error to account for production variability. The section 604 reduction requirements are applicable to annual production and import levels, not batches of production or imports. If companies carefully monitor their production and import levels, they may use every available allowance to the extent measurement variability is not a factor. Therefore, EPA believes it unnecessary to increase the offset requirement to account for production variability.

Section 607 provides that any trade result in an offset greater than any margin of error that the transferring company would have provided in complying with the reduction requirements. How much greater is the issue at hand. The only explicit guidance provided by that section is that the offset be "enforceable and quantifiable," that is, not so small as to be unmeasurable by available equipment and techniques. Implicit in the offset requirement itself, though, is that trades are to benefit not only the regulated industry but the environment as well. At the same time, Congress provided for trading primarily to afford industry flexibility in meeting the required reduction requirements. Placing too high an offset burden on trades would eviscerate Congress' purpose in allowing such transfers. Indeed, inter-pollutant trades are vital if companies, assigned allowances according to their 1986 production mix, are to reallocate allowances among chemicals to reflect changes in market demand for individual chemicals based on technological developments in substitutes for each listed chemical.

As discussed above, EPA believes that the best available measurement techniques permit measurement of class I substances to an accuracy of 0.1 percent of the total. Its experience to date indicates numbers generated through the record-keeping and reporting requirements and verified through on-site inspection are enforceable and quantifiable at that level of offset. The minimum offset that would be "enforceable and quantifiable" could thus be 0.1 percent of the number of allowances traded. To ensure that an enforceable and quantifiable reduction had occurred, EPA could set the offset at 0.1 percent and require that the best measuring techniques be used to guarantee that at least a reduction in excess of the actual amount transferred had occurred.

To gain insight into the environmental implications of different offset factors, the Agency multiplied the number and volume of intercompany trades that occurred during the first control period as well as the volume of intracompany trades that EPA believes would have taken place to meet market demand if the companies had had to trade to change their mix of chemicals by a range of possible offset factors. Applying offsets of 0.1, 1.0 and 2.0 percent, EPA calculated that the trades during the first control period would have netted 5,700, 57,000 and 114,000 of additional ODP reductions in the originally regulated CFCs than would have otherwise occurred.

In selecting an offset factor, the Agency is also concerned that the offset not significantly discourage trading. The Agency considers trading important to reducing the costs of phasing out ozone-depleting substances. As noted previously, for companies to change their mix of chemicals from the mix they had in the baseline year, they will have to trade allowances. For companies to shift among themselves the production and import of various chemicals as the market demands will also require trading. Providing companies with the flexibility to respond to the market is one way of minimizing the costs of control.

EPA is unable to precisely determine to what extent possible offset factors would discourage trading. Different companies would likely respond differently. Some importers are small, for example, and any offset would likely be a significant burden. Without knowing more, the Agency considers it prudent to propose an offset factor of 1.0 percent. It is substantially greater than an offset factor of 0.1 percent that would meet the minimum requirements of being quantifiable and enforceable. It is also substantially greater than the 0.1 percent margin of error that EPA believes companies will likely provide in complying with the applicable requirements. Moreover, an offset factor of 1.0 percent would garner benefits to the environment without significantly discouraging trading.

EPA recognizes that a larger offset might benefit the environment more. However, if significantly greater reductions than are mandated by the current phase-out schedule become necessary or feasible, the Agency can directly require them under section 606 of the Act ("Accelerated Schedule"). The potential adverse consequences of indirectly requiring a faster phase-out schedule through penalizing transfers could be significant. Indeed any discouragement of trades could distort market incentives to develop substitutes and could thereby increase the social costs of the phaseout. For example, a significantly higher offset rate might lead producers to *not* alter their baseline year mix of chemicals. If this happened, the incentive to reduce the use of those listed chemicals for which substitutes first became available would be reduced. Especially since some CFCs are likely to remain less expensive (even with the applicable tax) than their substitutes, any disincentive against substitution should be avoided.

As an example of the application of the proposed offset factor, assume one manufacturer has allowances for CFC–12 equal to 50,000 kg and allowances for CFC–115 equal to 6,000 kg. The manufacturer intends to trade 40,000 kg of CFC–12 for CFC–115 allowances. Since the ratio of the two chemicals' ozone depletion weights is 1:0.6, 40,000 kg of CFC–12 equals 66,667 kg of CFC–115. The offset percentage of 1 percent is applied to the 40,000 kg to yield an offset of 400 kg that must be deducted from the remaining 10,000 kg of CFC–12 allowances. After completion of the inter-pollutant trade, the manufacturer's balance sheet reads 9,600 CFC–12 allowances and 72,667 kg allowances of CFC–115. The Agency proposes that the company transferring the allowances have its allowance balance reduced by the amount of the trade plus the offset amount.

A final issue is whether the offset factor should be applied once or twice in the case of a single trade occurring between manufacturers and chemicals. For example, if the manufacturer described above wanted to trade its CFC–12 allowances to another manufacturer who wanted to produce CFC–115, would the offset allowance be applied to each step in the transfer (i.e., the trade between producers and the trade between chemicals) or to the transfer as a single event? EPA believes that the offset should be applied only once in this case, to prevent further market distortions.

Consistent with the current regulations, the Agency proposes that requests for approval of intercompany and intracompany trades be submitted to EPA before the trades take place. EPA maintains current accounts of all companies to ensure compliance with the applicable reduction requirements. Within three working days of a request to trade, EPA would determine whether its records indicate that the transferor has sufficient allowances to trade. If the Agency found that the transferor has sufficient allowances, it would notify the transferor that the Agency has no objection to the trade, and it would modify its accounts of the relevant companies' allowances accordingly. If the Agency fails to respond within three working days after receipt of the request, the company may proceed with the trade. However, should the Agency find at a later date that the conditions of the trade were not fully met, it may take enforcement action for any violation that occurred. To date, the Agency has responded to all trades but one within three days of receipt of the request.

I. Obtaining Additional Allowances—Transformation

1. Requests for Allowances for Use of Controlled Substances as Feedstock

As noted above, section 601(11) of the CAA defines production as "the manufacture of a substance from any raw material or feedstock chemical" but specifically excludes from this definition "(A) the manufacture of a substance that is used and entirely consumed (except for trace quantities) in the manufacture of other chemicals, or (B) the reuse or recycling of a substance." Today EPA is proposing to maintain its current approach to implementing exclusion (A) for all class I substances except carbon tetrachloride. Under the current approach, firms obtain additional production and/or consumption allowances upon proof that controlled substances have been consumed as feedstocks. The Agency proposes not to require that carbon tetrachloride first be consumed before transformation allowances are granted because it represents a unique situation. The approach for implementing 601(11) for this chemical will be described separately at the end of this section.

On June 5, 1990 (55 FR 24490) the Agency amended its final rule implementing the Montreal Protocol to allow persons who consume or transform controlled substances as feedstock for other substances to claim an allowance credit equal to the allowances expended for the production or importation of the controlled substances (§§ 82.9(e) and 82.10(c)). As with the additional allowances for exports, credit is only granted after the transformation has occurred and proof of transformation submitted to EPA. The Agency firmly believes that transformation must occur prior to granting the additional allowances in order to avoid the possibility that controlled substances intended for transformation are never actually transformed. Failure to transform chemicals produced in excess of allowable levels of production would adversely affect the environment and United States compliance with the Montreal Protocol.

Under the current regulations that EPA proposes to retain, persons that used and fully consumed controlled substances as feedstock (except for trace quantities) afterwards claim allowance credits equal to the allowances that were expended to either import or produce the substances transformed. To receive these allowances, the company reports the quantity of controlled substance

transformed, the commercial use of the new chemical, and whether the consumed controlled substance was produced or imported. The Agency reviews this information and issues allowances to the transforming company. This company can then either trade the allowances to the original producer or another supplier of the chemical. The Agency proposes to maintain this program for all groups of chemicals except Group IV (carbon tetrachloride). For the reasons discussed below, carbon tetrachloride will require special treatment.

2. Carbon Tetrachloride Transformation Allowances

The Agency is proposing a different process for granting allowances for the transformation of carbon tetrachloride. As described above, the current regulations require that companies transform the controlled substance and submit documentation to EPA that indeed the chemical has been transformed. EPA then grants the company additional allowances that the company would, presumably, trade back to the producer of the controlled substance that was transformed so that more could be made. This approach has worked for CFCs at least in part because relatively few CFCs are used to make other chemicals. Requiring that CFCs be transformed before additional allowances are issued thus has little impact on the number of allowances available to produce CFCs.

Unfortunately, this regulatory scheme is less workable for carbon tetrachloride because, according to Agency estimates, over 81 percent of the carbon tetrachloride produced in this country is used to produce CFCs or other chemicals. Since carbon tetrachloride was mostly transformed in 1989 (the applicable baseline year), companies will receive only small amounts of baseline allowances for the production of the chemical. (Some companies in fact will receive no allowances because all of their 1989 production was exported or transformed.) These initial allowances could be exhausted before additional allowances are obtained and returned to the carbon tetrachloride producers, potentially requiring a plant shut-down or a stop-start production cycle. Consequently, for carbon tetrachloride only, EPA is proposing an alternative scheme that provides allowances "up-front" prior to transformation.

The proposed scheme builds upon the current exemption certificate system used by the Internal Revenue Service (IRS) to implement the excise tax described above. The IRS exempts companies from the excise tax through a Registration Certification that states that the purchaser of the carbon tetrachloride covered by the certificate agrees to use the chemical as a feedstock chemical. The registration certificate consists of a statement executed and signed by the purchaser under penalties of perjury. A certificate may apply to a single purchase or may cover purchases for up to four years from its effective date. The Agency believes that this certificate provides adequate proof of intent to purchase a chemical for the purpose of transforming it.

The Agency notes, however, that the certificate does not record the amount of chemical to be transformed but simply states that all chemical shipments to plants or ordered under specified purchase orders are exempt from the excise tax. In order to grant allowances to carbon tetrachloride producers for transformations that will occur in the future, the Agency must know the exact amount intended for transformation. Consequently, EPA proposes that carbon tetrachloride producers submit along with a signed copy of the signed Registration Certification described above, a copy of a signed contract of sale, purchase order, or other official document stating the amount of the Group IV chemical that will be transformed and the date by which it will be transformed. Based on that submission, the Agency would then allocate a new type of allowance, a transformation allowance, that would be used to allow the production of carbon tetrachloride only for feedstock purposes. Since transformation credits would be granted up-front, proof of eventual transformation of the carbon tetrachloride would not entitle the transforming company to additional allowances for carbon tetrachloride as are available for transformation of other chemicals. In addition, since these allowances would be granted to a producer upon proof of another company's intent to transform that producer's carbon tetrachloride, these allowances would not be transferable.

Producers of carbon tetrachloride manufactured pursuant to transformation allowances remain liable for the transformation of the chemical even if another company purchases the carbon tetrachloride for the purpose of transforming it. Section 604(a) prohibits producers of class I substances from exceeding specified percentages of their baseline production. Since section 604(a) is self-effectuating, its prohibition applies to producers regardless of whether EPA has issued implementing regulations, and the Agency cannot shift the liability to other entities by regulation. Thus, if a company produces carbon tetrachloride in excess of its baseline allowances for that chemical and pursuant to transformation allowances, it will violate the section 604(a) prohibition if the chemical is not transformed. Obviously, a producer that sells carbon tetrachloride to another company loses direct control over the fate of that chemical. The producer, however, could contract with the purchaser to shift the costs of the producer being held liable for the purchaser's failure to transform. For instance, the producer could include in its contract of sale provisions requiring transformation of the carbon tetrachloride being sold and payment of liquidated damages in the amount of any civil penalties levied against the producer if the chemical is not fully transformed. Under such a contract, a producer would still be liable for exceeding its production cap under section 604(a) but the purchaser would bear the costs of its failure to transform.

The Agency proposes to monitor the transformation of carbon tetrachloride through quarterly reports submitted by CFC producers and other transforming companies as well as through periodic on-site record reviews. Transforming companies would be required to keep records of the quantities of carbon tetrachloride they receive and to document that transformation of the same quantity of carbon tetrachloride had taken place. The producer would have to document its production and be able to show where all of its production was sent. Producers would be responsible for collecting, holding, and submitting the appropriate documentation to the Agency. Any excess carbon tetrachloride not transformed would be charged as a violation against the producer of the carbon tetrachloride. EPA seeks comment on how it might best ensure that transformations had taken place and on what more the Agency could do to facilitate arrangements between companies to transform carbon tetrachloride.

The Agency is also concerned with the end-of-year operations of a plant that is producing carbon tetrachloride that must be transformed by December 31 of that same year. The Agency notes that the reliance of granting allowances up-front presents a problem at the end of the year for companies that have not received baseline allowances. In this case, companies could produce carbon tetrachloride during the last few weeks of the control period and yet it would

not be transformed until into the next control period. In such cases, the producing company would be in violation of the Clean Air Act. The Agency asks for comments on this issue and others related to granting allowances up-front.

Alternately, the Agency could use the same system used by companies for the other chemical groups whereby allowances are granted to a company once the controlled substance has been transformed. The transformer is then allowed to transfer the allowances back to the original producer to be expended in the production of additional controlled substances. Carbon tetrachloride producers worked under this system during the 1991 calendar year period. The Agency requests comments on whether to continue to use the 1991 mechanism for transformation of carbon tetrachloride or to switch to granting allowances up-front as proposed.

K. Obtaining Additional Allowances—Exports to Parties

1. Additional Consumption Allowances

Section 601(6) of the Clean Air Act, as noted above, defines the term consumption as "the amount produced in the United States, plus the amount imported, minus the amount exported to Parties to the Montreal Protocol." This definition is generally consistent with EPA's current program implementing the Montreal Protocol, but one important difference exists with regard to the destination of exports.

The Montreal Protocol defines consumption as production plus imports minus exports and then excludes exports to non-Parties in the calculation of consumption beginning in 1993. In effect, the definition under section 601(6) accelerates this limitation by moving forward the effective date to January 1, 1991 when exports to non-Parties cannot be subtracted from consumption.

Under its regulations implementing the Montreal Protocol, EPA issued consumption allowances equal to the United States' total allowable consumption and required that consumption allowances be expended in the production or importation of a controlled substance. It also allowed companies to request additional consumption allowances upon exporting any controlled substances from the United States.

EPA proposes to amend the current program in order to implement the requirements of the Clean Air Act. EPA proposes to grant additional consumption allowances only upon proof of exports to Protocol Parties. Nations that are Parties to the Protocol are listed in Appendix B. Since allowances under EPA's proposed regulations implementing the Clean Air Act would be chemical-specific, additional consumption allowances granted by EPA upon proof of export to Parties would also be specific to the controlled substance exported. The exporter granted additional chemical-specific consumption allowances could import (or combined with chemical-specific production allowance, produce) that specified controlled substance or trade the allowances to another company or for other chemical-specific allowances.

Under the Amendments to the Montreal Protocol, as of January 1, each Party shall ban the export of Group I and Group II chemicals to any non-Party and, commencing one year after entry into force of the Amendments, each Party shall ban the export of the remaining class I chemicals to non-Parties to the Amendments. Upon ratification of the Amendments by the Parties, EPA will promulgate regulations implementing these Protocol provisions.

2. Authorizations To Convert for Exports to Article 5 Parties

Section 604(e) authorizes EPA to permit production in excess of the specified production limits solely for export to, and use in, developing countries that are operating under article 5 of the Montreal Protocol. An article 5 country, as defined by the Protocol, is a Party that is a developing country whose annual calculated level of consumption of controlled substances is less than 0.3 kilograms per capita (see Appendix E). Moreover, section 604(e) and the Montreal Protocol both require that any such additional production be solely for the purposes of satisfying the basic domestic needs of the developing country that imports it.

A threshold issue in determining whether to permit excess production under the Protocol or section 604(e) is who is an article 5 country. While the Protocol sets forth the criteria that a country must meet to be considered an article 5 Party, it is up to individual countries to show that they meet the criteria and intend to operate under article 5. To date, few countries that the Protocol Parties have found to be developing have reported all of the data necessary to determine whether their per capita consumption of controlled substances is less than the relevant cap. Nevertheless, the Protocol Parties agreed on a list of qualifying countries in Nairobi in June of 1991.

In implementing the Montreal Protocol previously, EPA relied on the Protocol Secretariat's representation that certain countries had submitted data sufficient to show their consumption was below the applicable cap. The Agency also determined that several countries which had not yet supplied the Secretariat with sufficient data met the consumption criterion for article 5 treatment based on available information. Relying on its own determination, EPA granted United States producers additional production allowances for exports to those countries. With this notice, the Agency proposes to revise its list of article 5 countries as warranted by the Protocol Parties' agreement in Nairobi.

Another issue raised by the provision for excess production to supply article 5 countries is the meaning of "basic domestic needs." The Protocol does not define the phrase and its meaning has been debated by the Parties. Some countries have argued for a narrow construction that would include only providing an article 5 country's population with those things that the Western world considers necessities (e.g., refrigerators). Developing countries generally have argued for a much broader interpretation that would cover imports of controlled substances for use by their industries to produce goods for export and thereby provide jobs for their people. At their first meeting, the Parties agreed to interpret "basic domestic needs" as not including imports of controlled substances that would be exported in bulk form (i.e., not used in manufacturing a product).

EPA proposes to define "basic domestic needs" as the Parties have thus far defined it. It would be both inappropriate and impractical for EPA to unilaterally narrow the definition. The different constructions that have been debated by the Parties all have merit, but what construction should be adopted is a political decision for the Parties to make. The negotiators of the Protocol included the authorization to exceed the production limits for the purpose of "supplying the basic domestic needs" of article 5 Parties so that developing countries would not have to build their own production facilities to supply their domestic needs during the period before they had to begin the required phase-down. Defining basic domestic needs more narrowly than the Protocol Parties have and the developing countries want could result in article 5 countries finding it necessary to build the facilities that the Protocol Parties hoped to avoid.

A unilateral effort by the Agency to restrict the use of exports in developing countries would be of limited value, as well. For example, if an article 5 Party

imported CFC–113 from Japan, the United States and France and then used half of the total amount to expand its export market, it could claim that the CFC–113 that it got from the United States was used only for basic domestic needs. Moreover, EPA is not in a position to determine how United States controlled substances are used in another country. Making such determinations would require that EPA have access to information that it has no authority to obtain under other countries' law.

The Agency therefore proposes to authorize excess production upon proof of export to an article 5 country if the exporting company supplies adequate proof that the exported controlled substances have not and will not be reexported in bulk form. One manner of proof would be a contract covering the sale of the controlled substances that contains a provision forbidding the reexport of the controlled substances in bulk form and providing for liquidated damages equal to the resale price of the chemicals in the event the provision is breached. EPA requests comments on other forms such proof could take.

EPA's current regulatory mechanism for permitting production beyond the specified limits for exports to article 5 countries is based on two additional types of allowances: potential production allowances and authorizations to convert. Since the Protocol provides that no Party may exceed its applicable cap by more than 10 percent for purposes of supplying article 5 countries, the regulations allocate producers 10 percent of their baseline production allowances as potential production allowances. Upon proof of export to an article 5 country, a producer may obtain from EPA "authorization to convert" the appropriate amount of potential production allowances to actual production allowances.

EPA proposes to retain this mechanism in implementing the section 604(e) exemption from the phase-down requirements. Moreover, to be consistent with chemical-specific prohibition of section 604(a), potential production allowances and authorizations to convert would be granted on a chemical-specific basis.

In addition, section 604(e)(2)(A) establishes caps on additional production for exports to article 5 countries of 10 percent of baseline production for each year through the end of 1999 (2001 for methyl chloroform) and 15 percent of the same for 2000 through 2010 (2002 through 2012 for methyl chloroform). EPA proposes to allocate potential production allowances equal to 10 percent of the baseline production allowances granted to each company for the years 1992 through 1999 and 15 percent of those allowances for the years 2000 though 2012 (with the appropriate adjustments for methyl chloroform).

Trades of potential production allowances and authorizations to convert are not directly addressed by the statute. EPA believes that both should be transferable and that trades of these allowances and authorizations should not be subjected to the offset requirement applicable to trades of production and consumption allowances. The statute authorizes trades of production and consumption allowances. EPA created potential production allowances and authorizations to convert to implement provisions for exceeding otherwise applicable production limits. They thus are in the nature of production and consumption allowances and should likewise be transferable.

It does not follow, however, that trades of potential allowances and authorizations to convert should be subject to the offset requirement. The statute leaves to EPA how to implement the exemption for production exported to developing countries. EPA has chosen to implement it through creation of these two types of permits which, while similar to, are not the same as the allowances Congress prescribed and subjected to the offset requirement. Requiring an offset in this context would be counterproductive, moreover. As explained above, the Protocol provides for additional production for export to developing countries to reduce the need for these countries to build their own production facilities. To the extent an offset would reduce the amount of controlled substances that could be shipped to an article 5 country, the effectiveness of the Protocol and section 604(e) provisions in obviating the need for such facilities would also be reduced. The Agency believes that an offset on trades of potential production allowances or authorizations to converts would inappropriately discourage the supply of controlled substances to article 5 countries. EPA therefore proposes that no offset be required for trades of potential production allowances and authorizations to convert.

L. Additional Production Allowances for Transfers Among Parties to the Montreal Protocol

Section 616 requires EPA to issue regulations within two years of enactment providing for trades of allowable production with other Protocol Parties. That section provides, however, that such trades may occur only if the transferring country, at the time of the transfer, revises its production limits for the country to equal the lesser of (a) the maximum production that the country is allowed under the Protocol minus the amount transferred, (b) the maximum production that is allowed under the country's applicable domestic law minus the amount transferred, or (c) the average of the country's actual national production level for the three years prior to the transfer minus the production allowances transferred.

Section 616 does not limit the amount of allowable production that may be transferred to another Party, nor does it require that the Agency necessarily permit any proposed transfer of the United States' allowable production to another Party. As is provided in current regulations, EPA proposes to examine all proposed transfers to another Party for their potential impact on the economy, trade and the environment. If the Agency believes that a proposed trade is not consistent with domestic policy, it will disapprove it.

If EPA does not object to a trade to another Party, it must revise the "production limits for the United States" such that the revised limits are the lesser of the three factors described above. The first two factors are straightforward and would not require revision of the production limits for any company other than the company trading away its allowable production. The applicable limits under the Montreal Protocol and Title VI of the CAA are and will remain clear, and EPA's regulations do and will implement them by allocating allowable production to producers based on their historical market share. Thus, to the extent a transfer of allowable production to another Protocol Party would reduce the United States' allowable production, that reduction can be realized by reducing the production allowances allocated to the transferring company.

It is less clear how to implement the required reduction where the United States' annual average production for the preceding three years governs the amount by which the United States' allowable production must be reduced as a result of the transfer. If the company transferring its allowable production is responsible for any and all of the difference between the United States' allowable and actual production, clearly that company's production allowances should be reduced to reflect not only the transfer but also by the amount by which the company has

underproduced in previous years. But if one or more other producers are even partly responsible for any such shortfall between allowable and actual production, is it appropriate to reduce *their* production allowances because another producer chooses to transfer its allowable production to a Protocol Party? EPA thinks not. The Agency therefore proposes that the transferring company's production allowances be reduced by the amount transferred *plus* the amount by which the United States' average annual production for the three previous years is less than the United States' allowable production.

Section 616(a)(2) provides that the United States may accept transfers of allowable production from other Parties if EPA finds that the transferring Party has reduced its allowable production in the same manner as provided with respect to transfers from the United States. EPA has neither the resources nor the expertise to independently ascertain whether another country has effectively changed its production limits in the manner required. Consequently, the Agency proposes that it make the required finding where the principal diplomatic representative in the transferring country's embassy in the United States signs a statement that the transferring country has revised its production limits in the manner specified by section 616(a). Such a statement ought to be adequate assurance that the transferring country has indeed revised its production limits. In addition, it would be the responsibility of the United States company seeking approval of the transfer from abroad to obtain the required written statement.

VI. Section-By-Section Description

The following is a section-by-section description of today's proposed rule.

A. Authority Citation

The citation for the regulations is sections 604, 607 and 616 of the Clean Air Act as amended by the Clean Air Act Amendments of 1990 (42 U.S.C. 7671).

B. Section 82.1—Purpose and Scope

This section states that the purpose of the regulations is to implement the Montreal Protocol and sections 604, 607 and 616 of the Clean Air Act.

C. Section 82.2—Effective Date

EPA proposes January 1, 1992 as the effective date of these regulations. The temporary final rule recently promulgated by EPA was effective January 1, 1991 and established requirements only for the 1991 control period which ends December 31, 1991.

D. Section 82.3—Definitions

Several definitions are revised to conform to the definitions set forth in section 601 of the CAA. In particular, the terms "import" and "production" are changed to conform to their section 601 counterparts, and "control period" is redefined to include the calendar year period specified by section. Production does include spills that may occur as discussed in a previous rulemaking on spills promulgated by the Agency (55 FR 24490).

Section 601(7) defines the term import as meaning to land on, bring into, introduce into, or attempt to land on, bring into, or introduce into, any place subject to the jurisdiction of the United States, whether or not such landing, bringing or introduction constitutes an importation within the meaning of the customs laws of the United States. This definition is somewhat broader than the current regulatory definition, and so the Agency proposes to revise the regulations to track the statutory language. However, as described above, ships off-loading used or excess domestically produced controlled substances are exempt as companies operating under the Maquiladora Accord.

Section 601(7) does not define importer. The Agency proposes to define an importer as the importer of record listed on United States Customs Service Form 7501 (although not for establishing the baseline). The Agency uses this definition in its current program and has found it effective in monitoring compliance with the program.

The Amendments also do not define export. EPA proposes to retain its current regulatory definition of that term, which is the transport of controlled substances, either virgin, used or recycled, from within the United States or its territories, excluding United States military bases and ships for on-board use, to outside the United States or its territories. EPA also proposes to continue to use its definition of exporter as one who contracts to sell controlled substances for export, or transfers controlled substances to his affiliate in another country. The Agency has used this definition in the past to assign additional consumption allowances.

Finally, EPA proposes to retain its definition of "controlled substance" (and include the class I substances in the Appendix referenced by the definition). This definition, which is based on its Protocol counterpart and includes elaboration accepted by the Parties, distinguishes between bulk chemicals, which are regulated, and products, which are not regulated under section 604. "Controlled substance" means any substance listed in appendix A to this part, whether existing alone or in a mixture, but excluding any such substance or mixture that is in a manufactured product other than a container used for the transportation or storage of the substance or mixture. Any amount of a listed substance which is not part of a use system containing the substance is a controlled substance. If a listed substance or mixture must first be transferred from a bulk container to another container, vessel, or piece of equipment in order to realize its intended use, the listed substance or mixture is a controlled substance.

E. Section 82.5—Prohibitions

EPA proposes in this section to prohibit persons from producing or importing controlled substances in excess of the production allowances, consumption allowances and transformation allowances they hold. In addition, this section would prohibit persons from producing or importing more than 150 percent of their baseline levels of Group I chemicals between July 1, 1991 and December 31, 1992, except to the extent they had obtained additional allowances for exporting to Parties in general or article 5 countries in particular, for transforming Group I substances or for obtaining allowable production from another Protocol Party during the same six-month period. This added restriction on Group I chemicals ensures that the United States continues to meet its obligations under the Montreal Protocol.

F. Sections 82.5 and 82.6—Apportionment of Baseline Production and Consumption Allowances

In these sections, EPA proposes each company's baseline production and consumption allowances for each chemical within the five groups of class I substances. The Agency proposes to reserve the apportionment of allowances for class II substances for the reasons given above.

A general explanation of how EPA calculated each company's baseline allowances is provided above. As noted, to establish baseline allowances for the groups of newly regulated chemicals, EPA obtained information on and documentation of companies' 1989 production, import and export of these chemicals through a request issued under section 114 of the Act. Because section 601(11) excludes from the definition of production the amount of a chemical used and entirely consumed

(except for trace quantities) in the production of another chemical, the Agency also requested companies that had consumed or transformed the regulated chemicals as feedstock in the manufacture of another chemical to supply information documenting the transformation. Based on this information, the Agency calculated companies' baseline production and consumption allowances for the groups of newly regulated chemicals specified by section 602 (i.e., Group III—the newly regulated CFCs; Group IV—carbon tetrachloride; and Group V—methyl chloroform). Baseline production allowances were calculated by excluding from the amount of the newly regulated chemicals produced in 1989 the amount of those chemicals transformed in the same year. The Agency attempted to trace every discrete amount of a chemical that had been transformed to the producer of that discrete amount of chemical and exclude that amount from the producer's baseline allowances. In some cases, however, EPA was unable to track the chemical transformed to its original producer. To account for these unassignable amounts of transformed chemicals, EPA applied a correction factor to distribute them among producers of the relevant chemicals based on their respective market shares.

The Agency believes that this is a fair way of allocating transformation amounts to the producers of these chemicals, with the larger producers receiving the larger share of the documented, but unassignable, transformation amounts. This approach is also consistent with that taken by the Agency in a previous rulemaking apportioning baseline allowances. In that rulemaking, EPA decided that documented, but unassignable, exports of the regulated CFCs and halons should be allocated to producers based on their relative market share. As a result, larger producers had their consumption allowances decreased more than smaller producers.

EPA determined each company's consumption allowances by performing the consumption equation for each company based on that company's documented producton, imports and exports. For the chemicals for which the Agency is establishing baseline allowances in this rule, EPA was able, in most cases, to track all exports back to the exported chemicals' producers. However, it was also necessary to allocate unassignable exports to producers in a manner similar to the method used to allocate unassignable transformation amounts to producers. In addition, since the Protocol as construed by the Parties and EPA's rule do not count imports transformed in the manufacture of other substances against applicable consumption limits, the Agency has not counted baseline year imports transformed in the manufacture of other substances in calculating baseline consumption allowances. (See 55 FR 24491; June 15, 1990.)

In developing chemical-specific allowances for Group I and II controlled substances, the Agency reviewed the original data submitted in compliance with the section 114 information request promulgated in 1987. Producers received chemical-specific production allowances based on what they had reported as production in 1986, excluding any production that was used and consumed as a feedstock for another chemical. Producers and importers of these chemicals received chemical-specific consumption allowances based on their reported production, imports and exports of these chemicals. The Agency further adjusted individual consumption allowances within these two groups to take account of the unattributed exports. Chemical-specific, unattributed exports were apportioned to each consumption allowance holder based on the percentage share of the market that producer and/or importer held for that chemical.

G. Section 82.7—Granting of Allowances for Groups I, II, III, IV, and V Controlled Substances

This section allocates percentages of baseline allowances for Group I, Group II, Group III, Group IV and Group V controlled substances for all control periods until the year 2000 and beyond according to the schedule presented in section 604. Baseline production and consumption allowances are chemical-specific.

H. Section 82.9—Availability of Additional Production Allowances

This section proposes to grant persons with baseline production allowances for any controlled substance potential production allowances equal to 10 percent of their baseline allowances for that chemical for each year from 1992 through 1999 and 15 percent for each year from 2000 through 2010 (with adjustments for methyl chloroform). Potential production allowances may be converted to production allowances with proof of export to a developing country that is operating under article 5 of the Protocol, as specified under § 82.11.

A company can also increase or decrease its production allowances by trading with another Party to the Protocol. For trades to another Party, the submission must include the identity and address of the person, the identity of the Party, the names and telephone numbers of contact persons for the person and for the Party, the chemical and level of production being transferred and the control period to which the transfer applies. For trades to the United States, similar information is required except the transferring Party must submit a document from that nation's embassy in the United States stating that it has revised its production limits according to the conditions stated in section 616.

Finally, EPA proposes that a company may receive additional production allowances for the transformation of a Group I, II, III and V chemical. To obtain additional production allowances for the transformation of these chemicals, a person must submit a request for production allowances that would include the identity and address of the person, the name, quantity of the controlled substance used and entirely consumed in the manufacture of another chemical and a copy of the invoice or recent documenting the sale from the producer of the chemical to the period, and the name, quantity and verification of the commercial use of the resulting chemical. The Agency uses this information to confirm that indeed the chemical was transformed, and that production allowances were used to produce the chemical. If the transformed chemical were imported, the company would only receive consumption allowances, since only domestic consumption allowances were consumed to bring the chemical into the country.

Carbon tetrachloride producers may receive transformation allowances that are used to produce carbon tetrachloride, based on certifications made by transforming companies that they will indeed transform the carbon tetrachloride and contracts of sale indicating the amount of the chemical sold. The Agency proposes that requests for transformation allowances be accompanied by a copy of the IRS certificate that producers must obtain to be exempted from the excise tax as well as of the contract with the transforming company indicating what amount of carbon tetrachloride it will transform. EPA may consider additional information such as verification of intended use of the resulting chemical. Producers remain liable for the transformation of carbon tetrachloride.

I. Section 82.10—Availability of Additional Consumption Allowances

Companies can receive additional consumption allowances for exports to Parties. EPA proposes that companies submit the identical information as required for authorization to convert for exports to article 5 countries. However, no demonstration that the controlled substances will not be reexported would be required.

Companies can also receive additional consumption allowances for the transformation of a controlled substance. Any application for additional production allowances for the transformation of a controlled substance would also be treated as an application for additional consumption allowances.

J. Section 82.11—Exports to Article 5 Parties

Companies may obtain authorization to convert potential production allowances to production allowances by exporting controlled substances to developing countries that come under article 5 of the Montreal Protocol.

The proof required by EPA in order to grant authorization to convert potential production allowances for exports to article 5 countries includes the following: The identities and the addresses of the exporter and the recipient of the export; the Exporter's Identification Number (EIN) listed on the United States Census Export Declaration form; the names and telephone numbers of contact persons for the exporter and the recipient; the quantity and type of controlled substance; the source of the controlled substance and the date purchased; the date on which and the port from which the controlled substance was exported from the United States or its territories; the country to which the controlled substances were exported; the bill of lading and the invoice indicating the net quantity of controlled substance and date shipped and documenting the sale of the controlled substance to the purchaser; and the harmonized tariff number (or "commodity code") of the good exported. In addition, the exporter must adequately demonstrate that the export has not been and will not be reexported in bulk form.

This information would be used by EPA to verify that the export did indeed occur and to prepare end-of-year reports required by the Montreal Protocol. The Agency would review this information expeditiously and issue a notice granting authorization to convert additional consumption allowances to the exporter if all the submitted information indicates that the export did indeed occur.

K. Section 82.12—Exchanges

Companies would submit requests for inter-pollutant and intercompany trades to EPA that would include the identities and addresses of the transferor and the transferee; the name and telephone numbers of contact persons for the transferor and for the transferee; the type and amount of allowances being transferred; the amount of the one percent offset applied to the unweighted amount traded to be deducted from available allowances (except in the case of potential production allowances and authorizations to convert) and the amount of unexpended allowances or authorization for that chemical that the transferor holds as of the date the claim is submitted to EPA. The Agency uses this information to verify that sufficient allowances exit for the trade. The Agency would issue a "No Objection Notice" within three working days if EPA does not object to the trade. If EPA did deny the trade, the transferee would have 10 working days to appeal the decision.

L. Section 82.13—Record-keeping

1. Producers

a. *Daily Record-Keeping.* Producers would be required to maintain dated records of the quantity of the class I substance produced at each facility including the dated records of the quantity of controlled substances used as feedstocks in the manufacture of controlled substances and in the manufacture of non-controlled substances and any virgin, used or recycled controlled substances introduced into the production process of new controlled substances. They would also be required to keep records of the feedstock materials consumed in producing the regulated chemicals at each facility. EPA requests records of feedstocks consumed since EPA can approximate the quantity of controlled substances produced by monitoring the materials consumed. Producers of Group I chemicals would also maintain dated records of HCFC–22 and CFC–116 produced within the same facility or production unit of a controlled substance. The production volume of HCFC–22 and CFC–116 will help determine the duration of time in which facilities are dedicated to the production of controlled substances if the plant maintains year-round production. The Agency would also require records for the quantity of used or recycled controlled substances, the date received, and the names and addresses of the sources of recyclable or recoverable materials containing controlled substances which are recovered at each plant. Records of shipments of controlled substances from each facility would have to be maintained as well. EPA believes that this requirement will aid the Agency in verifying production. Finally, EPA proposes that all spills or releases of 100 pounds or more be recorded with the date and the estimated quantity of the controlled substance.

EPA believes that current methods of record-keeping will generally be sufficient to satisfy the record-keeping requirements. EPA is aware that some producers may not make daily production estimates over weekends, and that production may not be measured directly but may be determined from records of consumption, shipments, and inventories. For the purpose of verifying that these accounting procedures are acceptable, EPA is proposing that producers who have not previously done so submit within 120 days of publication of this final rule a report detailing how production is measured on a regular basis and how these data will be used to determine quarterly production figures in kilograms.

b. *Production Reports.* EPA proposes that producers report on a quarterly basis consistent with the control period, within 45 days after the end of the quarter. The Clean Air Act specifies that controls be on a calendar-year basis and thus EPA cannot allow compliance to be determined based on a company's fiscal period to the extent that it is different from the specified control period. However, if the first and last quarterly reports are adjusted to coincide with the beginning and end of the control period, the interim quarterly reports may be based on a fiscal quarter, provided EPA determines that a person's fiscal quarters follow the calendar quarters closely enough so as not to complicate its review of records.

Since one purpose of these reports is to provide EPA with information to verify production, EPA proposes that producers submit the following information: Summaries of quarterly production of the controlled substances, specifying the quantity used and consumed as feedstock for controlled and non-controlled substances; the quantity used and consumed as feedstock for controlled and non-controlled substances; the quantity, the date received and source of material containing recoverable controlled substances and the quantity of controlled substances recovered;

summaries of total quarterly and control-period-to-date production levels each class I controlled substance and the producer's total expended and unexpended consumption allowances; expended and unexpended production allowances; potential production allowances; and authorization to convert potential production allowances to production allowances, as of the end of the quarter. In addition, firms must report the total shipments of each controlled substance produced at that plant in the quarter.

Section 82.13(f)(2) (ii) and (iii) of the proposed rule requires detailed information on the quantity of each chemical not a controlled substance produced within each facility also producing one or more controlled substances and for dated records of the quantity of raw materials and feedstock chemicals used at each plant for the production of controlled substances. The Agency needs this type of information so that it can develop compliance verification procedures and quantify the controlled substances produced. Industry has noted that for some production processes, especially that of carbon tetrachloride, such information gathering might prove to be excessively burdensome to both the Agency and the regulated community. The carbon tetrachloride production process apparently involves a very large number of different chemicals, with carbon tetrachloride only composing a small part of the production stream. Therefore, EPA seeks information on exactly how many plants are involved, the number and types of included chemicals, and specifics of the production processes. Finally, the Agency seeks comments on how it might best be able to gather the information needed to ensure compliance without, if possible, requiring data on each and every substance in the production stream.

2. Importers

a. *Daily Record-Keeping.* EPA is proposing the same requirements for imports as are contained in its current regulations (56 FR 9518). The proposed rule requires that importers maintain daily records of the following: The quantity of virgin, used, and recycled controlled substances imported and brought into the United States in bond, the date and port of entry into the United States or its territories, the country from which the imported controlled substances were exported and the port of exit. In addition, importers would have to record the commodity code and the importer number for each shipment. Importers would also have to keep the following documentation to verify imports: the bill of lading, the invoice and United States Customs Entry Summary Form (Form 7501 or Form 7512). This information will allow EPA during compliance checks and investigations of potential violations to check United States Census reports against shipments. Retention of the bill of lading and the invoice is necessary to provide EPA with an independent check on quantities imported, separate from Census and Customs data.

b. *Import Reports.* EPA proposes that importers, like producers, file quarterly reports within 45 days of the end of the reporting period. Importers may receive shipments at several ports throughout the country and 45 days are needed to collect this information. EPA believes that these companies need sufficient time to summarize the information and report accurate quantities. Also since several importers are also producers, the reporting period for importers should be consistent with the 45-day reporting period for producers. Again, EPA cannot allow compliance to be determined based on a company's fiscal period to the extent that it is different from the specified control period. However, if the first and last quarterly reports are adjusted to coincide with the beginning and end of the control period, the interim quarterly reports may be based on a fiscal quarter, provided EPA determines that a person's fiscal quarters follow the calendar quarters closely enough so as not to complicate record review.

These reports would be required to include the following: the quantity of controlled substances that are imported in that quarter, the level of each controlled substance imported for the quarter and the total for the control period, the total quantity of expended and unexpended consumption allowances the importer holds at the end of the quarter. The importer must also provide a summary of the import activities which shall include the quantity of each import as recorded on the Entry Summary Form to the United States Customs Service, the date and port of entry into the United States or its territories, the country from which the imported controlled substances were imported and the port of exit, and a name and address from whom additional information can be obtained. In addition the commodity code and the importer number have been included to assist with comparison and verification of importer records with United States Census and Customs records. Finally, the Agency proposes that importers, when reporting controlled substances contained in mixtures, tell what percentage of the mixture consists of controlled substances.

The Agency in implementing the existing rule determined that exporters must report the residual amounts (heels) of controlled substances that remain in isotanks or canisters or other shipping containers and are returned to the United States as imports. Companies are entitled to receive, and do so when they request them, additional allowances for the full weight of their export. Therefore, as a matter of consistency the Agency must require companies to report the controlled substances that return in the form of heels as imports, have available consumption allowances, and expend these allowances in the process. Finally, exporters who intend to return heels must possess allowances before the heels are returned and report heel imports quarterly.

3. Exporters

EPA is proposing the same reporting and record-keeping requirements for exporters as contained in its existing regulations (56 FR 9518). Firms not requesting additional consumption allowances would have to report within 45 days of the end of the control period. EPA requires this information to comply with the Montreal Protocol and therefore does not believe that more frequent reporting is necessary. Since consumption allowances are not requested for these exports, periodic monitoring and independent verification is not needed. Consequently, these exporters need only report at the end of the control period.

From these exporters EPA proposes the following be submitted: name and address of the exporter and recipient of the exports, the exporter's Employer Identification Number (EIN), the type and quantity of controlled substances exported and the percent that is recycled or used, date and port from which the exports were shipped. The commodity code would also be required because it allows EPA to verify these shipments. A final requirement would be reporting the date and source from whom the exported controlled substances were purchased.

4. Transformers

Companies that use any of the controlled substances as feedstock and request additional allowances under §§ 82.9, 82.10, and 82.11 of EPA's regulations would have to maintain the following records: dated records of the quantity of controlled substance used and entirely consumed in the manufacture of another chemical, copies

of the invoices or receipts documenting the sale from the producer or importer of the controlled substance to the person, dated records of the names, commercial use and quantities of the resulting chemicals, and dated records of shipments to the purchasers of the resulting chemicals.

5. Class II Controlled Substances

For class II controlled substances, companies who produced, imported, or exported a class II substance must file an annual report by 45 days after the end of the calendar year, setting forth the amount of the substance that such person produced, imported, and exported during that year. Each such report shall be signed and attested by a responsible officer.

VII. Impact of Proposed Action

In preparation for developing regulations, the Agency has prepared a draft Regulatory Impact Analysis that evaluates the costs and benefits of phasing out class I chemicals.

The costs and benefits of the phase-out were estimated by comparing the relative percentage of ozone depletion that could occur in the future to a projected baseline which would occur in the absence of any regulation. In this baseline case, increased use of class I chemicals is associated with decreases in stratospheric ozone that lead to increased ultraviolet radiation levels and global climate change.

The RIA used two projections to estimate ozone depletion. The primary method is a one-dimensional model, which has been used in previous EPA analyses of the stratosphere, and is taken from Connell (1986). This model translates emissions of the class I chemicals into chlorine loadings, and expresses these loadings in terms of depletion relative to ozone concentrations in 1970. This first projection does not take into account any depletion that may have occurred prior to 1988.

To account for the observed depletion prior to 1988, the agency developed a second projection using an adjusted version of the one-dimensional parameterized model. In this model an adjustment factor was applied so that historical emission data, when entered into the model, predicted the observed estimated level of ozone depletion prior to 1988. For this adjustment, the Agency assumed that the average ozone trend over the latitudes 30°N–64°N was representative of the global change in column ozone, and that the trend is due to decreases in stratospheric ozone. The model was further adjusted to account for the seasonal level of UV–B expected when ozone depletion occurs. The RIA provides results based on both model projections.

The major health benefits of these regulations are attributable to avoiding ultraviolet radiation effects. The major environmental effects are based on studies of decreased crop and fish harvests associated with increased ultraviolet radiation. Decreased stratospheric ozone is expected to lead to increased tropospheric ozone which can also reduce crop yields, and lead to rapid deterioration of polymers. Increases in atmospheric CFCs, halons, carbon tetrachloride and methyl chloroform can lead to increased temperatures, resulting in rising sea levels. The basis for these analyses is found in the document Assessing the Risks of Trace Gases that Can Modify the Stratosphere (EPA 1987).

Social costs of reducing CFC, halon, and MCF use through regulation were estimated by examining the costs of alternative technologies and materials for producing CFC-, halon-, and MCF-based products. Social costs are the additional amount of resources required to produce an equivalent amount of goods and services for consumers. Regulation also transfers income from consumers of class I-based products to other sectors of society. The economic model calculated the social costs, based on available or future control technologies that could be used to reduce or eliminate the use of class I chemicals, that society would pay to meet the production targets of the Clean Air Act. This economic model generally selected those control options that were either already being used by industry, or were the least cost options available thus minimizing cost to society. Once selected, the model would total social costs and transfer payments for each year necessary to meet the reduction targets of the Clean Air Act.

A phase-out significantly reduces the rate of depletion of stratospheric ozone. Indeed, the atmospheric models indicate that ozone concentrations will return to historic levels in the middle of the next century. However, it should be noted that these models are under-predicting the level of ozone depletion, and that they do not account for the most recent observation that ozone concentrations have decreased by three to five percent over the last decade in the northern mid-latitudes.

The health effects due to ozone depletion are generated from estimated dose-response relationships. These dose-response relationships have large uncertainties related to the type of population affected, and the variability in the studies providing the data. However, despite these uncertainties, the phase-out of production of class I chemicals reduces the additional incidence of melanoma and non-melanoma cancers (basal and squamous) for people born before 2075 by between 55 million and 218 million cases. Cancer deaths avoided range from 3.2 million to 4.5 million. The morbidity costs are based on focus groups used to estimate the costs of treatment. For deaths avoided, the Agency used a range of $3 million to $12 million based on literature reviews.

A second human health benefit of CFC and halon regulation is the reduced incidence of cataracts. The estimated increase in cataracts roughly increases 0.5 percent for each percent increase in UV–B. With no controls, between 18.1 million and 22.6 million additional cases of cataracts are projected to occur among people born before 2075 in the United States due to ozone depletion. Under the phase-out, between 17.9 million and 22.4 million are avoided. The value of the benefits in the United States of these avoided cataract cases ranges between $2.73 billion and $3.9 billion, based on the average cost to treat cataract cases.

The quantifiable environmental benefits in the United States due to CFC, halon, MCF, and carbon tetrachloride regulation, although small when compared to the value of the avoided cancer benefits, are also substantial. The increases in ultra-violet radiation have been shown to affect crop yield and quality adversely. The estimated increased value of crops harvested due to decreased levels of damaging ultraviolet radiation range between $28.4 billion and $41.3 billion. The estimated increased value of fish harvested, based on limited studies, is between $5.6 billion and $9.5 billion. The estimated increased value of crops harvested due to decreased levels of tropospheric ozone range from between $14.4 billion and $23.9 billion. Decreased costs in protecting polymer products from increased ultraviolet radiation are between $4.1 billion and $5.2 billion, and benefits of avoiding costs due to a rise in the sea level are $6.2 billion under the phase-out. Again, the Agency emphasizes that these benefit estimates are based on limited data containing large uncertainties. However, they do provide an order of magnitude estimate of the likely benefits to preserving the ozone layer.

The costs of these regulations are expected to depend on the speed at which specific CFC-user industries and the economy as a whole can adopt techniques to reduce the use of ozone

depleting compounds and on the potential for these technologies to achieve the reductions required. Based on the best assumptions available, the Agency estimates that the total social costs approximate $5.8 billion between 1989 and 2000 and $36.2 billion between 1989 and 2075 to completely phase-out class I chemicals by the turn of the century.

Transfer payments generated by CFC regulation are significant, particularly in the initial years of regulation. Their total value is estimated to be $4.2 billion under the phase-out between 1989–2000.

The value of benefits to people born before 2075 exceed the control costs through 2075. Because the 2075 to 2165 benefits also exceed costs, the results clearly indicate that the benefits of reduction in CFCs, carbon tetrachloride, MCF, and halons exceed the costs of reducing their use by a substantial margin. The Agency estimates that the total benefits through the year 2075 range from $4.9 to $18.9 trillion while the social costs during this period approximate $36 billion.

VIII. Additional Information

A. Executive Order 12291

Executive Order (E.O.) 12291 requires preparation of a regulatory impact analysis for major rules, defined by the order as those likely to result in:

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

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

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

EPA has determined that this proposed rule meets the criteria of a major rule. The Agency estimates that annual industry costs will exceed $100 million. A regulatory impact analysis has been prepared to analyze these costs and has been submitted to the Office of Management and Budget for review.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601–601, requires that federal agencies examine the impacts on small entities. Under 5 U.S.C. 601(a), whenever an agency is required to publish a general notice of rulemaking, it must prepare and make available a regulatory flexibility analysis (RFA).

The Agency originally published an RFA to accompany the August 12, 1988 final rule (53 FR 30566) that placed the initial limits on the production and consumption of CFCs and halons. The RFA concluded that of the industries affected by regulation of CFCs and halons only some segments of the foam blowing industry were potentially at risk. In contrast to almost all the other uses of these chemicals, for the foam industry CFCs are a larger percentage of the final costs.

Different sectors of the foam industry are likely to be affected differently. Indeed, the August 12 rule discussed how several foam sectors were already moving away from CFCs. The foam food packagers have shifted out of CFC–11 and CFC–12 to HCFC–22. Similarly, the industry sector that makes flexible molded foam has moved out of CFCs with minimal disruption, while the extruded polystyrene boardstock industry intends to eliminate the use of CFC–12 in the near future.

In updating this analysis to examine the other foam sectors as well as those sectors using carbon tetrachloride and methyl chloroform, the Agency did re-examine the effect of increased price on several foam segments—polyurethane-sprayed and molded foam and foam insulation and boardstock. The insulating foam industry is investigating the use of HCFC–141b or a blend of HCFC–141b and HCFC–123. To the extent that these substitutes are determined to be technically and economically viable, the longer term impact on these firms will be minimized. The industry is actively pursuing these options and is currently waiting for the results of toxicity studies required in the new use of these chemicals.

Based on the analysis contained in the RFA, EPA does not believe that any foam industry segment will be substantially harmed over the long term, and that recent development of alternative blowing agents for use in these sectors indicate the competitiveness of this industry. Sectors using carbon tetrachloride and methyl chloroform are unaffected due to the small volume of these chemicals used in their applications.

C. Paperwork Reduction Act

As required by section 3504 of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, EPA has submitted an information collection request to the Office of Management and Budget for review.

Industry reporting burden for this collection is estimated in the following table. It includes the time needed to comply with EPA's reporting and compliance-monitoring requirements as well as that used for the completion of voluntary reports and requests under this rule.

RESPONDENT BURDEN PER OCCURRENCE

Respondent Activities	Producer Hours	Importer Hours
Conduct transfer transactions	8	8
Obtain additional allowances through exports	7	7
Convert potential allowances through exports [1]	42	42
Convert potential allowances by receiving allowances from Party countries	82	82
Receive additional allowances for transforming	42	0
Comply with reporting and compliance monitoring requirements	144	88
Total	325	227

[1] This is a cost for exporters. However, producers and importers are generally the exporter.

Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to Paperwork Reduction Project, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Dated: September 17, 1991.

William K. Reilly,

Administrator.

Title 40, Code of Federal Regulations, part 82, is amended to read as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

1. Part 82 is designated as Subpart A and revised to read as follows:

Subpart A—Production and Consumption Controls

Sec.

Authority: 42 U.S.C. 7671(c), 7671(l), 7671(n)

Subpart A—Production and Consumption Controls

§ 82.1 Purpose and scope.

(a) The purpose of these regulations is to implement the Montreal Protocol on Substances that Deplete the Ozone Layer and sections 603, 604, 607 and 616 of the Clean Air Act as amended by the Clean Air Act Amendments of 1990, Public Law 101–549. The Protocol and section 604 impose limits on the production and consumption (defined as production plus imports minus exports) of certain ozone-depleting chemicals according to specified schedules. The Protocol also requires each nation that becomes a Party to the agreement to impose certain restrictions on trade in ozone-depleting substances with non-Parties.

(b) This rule applies to any individual, corporate, or governmental entity that produces, transforms, imports, or exports controlled substances.

§ 82.2 Effective date.

(a) The regulations under this part take effect January 1, 1992.

(b) The regulations under this Part that were effective prior to January 1, 1992 are saved for purposes of enforcing the provisions that were applicable prior to January 1, 1992.

§ 82.3 Definitions.

As used in this part, the term:

(a) *Administrator* means the Administrator of the Environmental Protection Agency or his authorized representative.

(b) *Baseline consumption allowances* means the consumption allowance apportioned under § 82.6 of this subpart.

(c) *Baseline production allowances* means the production allowances apportioned under § 82.5 of this subpart.

(d) *Calculated level* means the level of production, export or import of a controlled substance determined by multiplying the amount (in kilograms) of production, exports or imports of the controlled substance by that substance's ozone depletion weight listed in appendix A to this subpart.

(e) *Class I* refers to the controlled substances listed in appendix A of this subpart.

(f) *Class II* refers to the controlled substances listed in appendix A of this subpart.

(g) *Consumption allowances* means the privileges granted by this part to produce and import controlled substances; however, consumption allowances may be used to produce controlled substances only in conjunction with production allowances. A person's consumption allowances are the total of the allowances he obtains under § 82.7 (baseline allowances for class I controlled substances) and § 82.10 (additional consumption allowances upon proof of exports of controlled substances), as may be modified under § 82.12 (transfer of allowances).

(h) *Control period* means the period from January 1, 1992 through December 31, 1992, and each twelve-month period from January 1 through December 31, thereafter.

(i) *Controlled substance* means any substance listed in Appendix A to this subpart whether existing alone or in a mixture, but excluding any such substance or mixture that is in a manufactured product other than a container used for the transportation or storage of the substance or mixture. Any amount of a listed substance which is not part of a use system containing the substance is a controlled substance. If a listed substance or mixture must first be transferred from a bulk container to another container, vessel, or piece of equipment in order to realize its intended use, the listed substance or mixture is a controlled substance. Controlled substances are divided into two groups, class I and class II. Class I substances are further divided into five groups, Group I, Group II, Group III, Group IV and Group V, as set forth in appendix A to this subpart.

(j) *Export* means the transport of virgin, used or recycled controlled substances from inside the United States or its territories to persons outside the United States or its territories, excluding United States military bases and ships for on-board use.

(k) *Exporter* means the person who contracts to sell controlled substances for export, or transfers controlled substances to his affiliate in another country.

(l) *Facility* means any process equipment (e.g., reactor, distillation column) used to convert raw materials or feedstock chemicals into controlled substances or consume controlled substances in the production of other chemicals.

(m) *Import* means to land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into, any place subject to the jurisdiction of the United States whether or not such landing, bringing, or introduction constitutes an importation within the meaning or the customs laws of the United States, with the following exemptions:

(1) Off-loading from a ship used or excess controlled substances during servicing; and

(2) Importing controlled substances from Mexico by companies operating under the Maquiladora Accord.

(n) *Importer* means the importer of record listed on U.S. Customs Service Form 7501 or 7512 for imported controlled substances.

(o) *Montreal Protocol* means the Montreal Protocol on Substances that Deplete the Ozone Layer, a protocol to the Vienna Convention for the Protection of the Ozone Layer, including adjustments adopted by the Parties thereto and amendments that have entered into force.

(p) *Nations complying with, but not joining, the Protocol* means any nation listed in appendix C to this part.

(q) *Party* means any nation that is a Party to the Montreal Protocol and listed in appendix B to this part.

(r) *Person* means any individual or legal entity, including an individual, corporation, partnership, association, state, municipality, political subdivision of a state, Indian tribe, and any agency, department, or instrumentality of the United States and any officer, agent, or employee thereof.

(s) *Plant* means one or more facilities at the same location owned by or under common control of the same person.

(t) *Potential production allowances* means the production allowances obtained under § 82.9(a).

(u) *Production* means the manufacture of a substance from any raw material for feedstock chemical, but such terms do not include:

(1) The manufacture of a substance that is used and entirely consumed (except for trace quantities) in the manufacture of other chemicals; or

(2) The reuse or recycling of a substance.

Production includes spilled or vented controlled substances equal to or in excess of one hundred pounds per event.

(v) *Production allowances* means the privileges granted by this part to produce controlled substances;

however, production allowances may be used to produce controlled substances only in conjunction with consumption allowances. A person's production allowances are the total of the allowances he obtains under § 82.7 (baseline allowances for class I controlled substances), and § 82.9 (a), (b) and (c) (additional production allowances), as may be modified under § 82.12 (transfer of allowances).

(w) *Transform* means the manufacture of a substance that is used and entirely consumed (except for trace quantities) in the manufacture of other chemicals for commercial purposes.

(x) *Transformation allowances* means the privileges granted by this part to produce or import Group IV controlled substances for the purpose of transforming those substances. Any Group IV controlled substance produced pursuant to a transformation allowance must be transformed. Production with transformation allowances does not expend consumption allowances. A person's transformation allowances are the total of allowances he obtains under § 82.9(d).

(y) *Unexpended consumption allowances* means consumption allowances that have not been used. At any time in any control period, a person's unexpended consumption allowances are the total of the level of consumption allowances he has authorization under this part to hold at that time for that control period, minus the level of controlled substances that the person has produced or imported in that control period until that time.

(z) *Unexpended production allowances* means production allowances that have not been used. At any time in any control period, a person's unexpended production allowances are the total of the level of production allowances he has authorization under this part to hold at that time for that control period, minus the level of controlled substances that the person has produced in that control period until that time.

§ 82.4 Prohibitions and requirements.

(a) No person may produce, at any time in any control period, any controlled substance in excess of the amount of unexpended production allowances for that substance (or unexpended transformation allowances for Group IV controlled substances) held by that person under the authority of this part at that time for that control period. In no event may any person produce in the period from July 1, 1991 through December 31, 1992 a total calculated level of Group I controlled substances in excess of 150 percent of that person's baseline production allowances for Group I substances plus any additional production allowances for Group I controlled substances that the person obtained under §§ 82.9 and 82.12 of this subpart during this same period. Every kilogram of such excess constitutes a separate violation of this regulation.

(b) No person may produce or import, at any time in any control period, any controlled substances in excess of the amount of unexpended consumption allowances (or unexpended transformation allowances for Group IV controlled substances) held by that person under the authority of this part at that time for that control period. In no event may any person produce or import in the period from July 1, 1991 through December 31, 1992 a calculated level of Group I controlled substances in excess of 150 percent of that person's baseline consumption allowances plus any consumption allowances for Group I controlled substances that the person obtained under §§ 82.10 and 82.12 of this subpart during this same period. Every kilogram of such excess constitutes a separate violation of this regulation.

(c) Any Group IV substance produced pursuant to transformation allowances must be transformed in the same control period during which the Group IV substance was produced. The person who produces the Group IV substances pursuant to transformation allowances is liable for any failure to transform the substance. Every kilogram of Group IV substance produced pursuant to transformation allowances but not transformed constitutes a separate violation of this regulation.

(d) A person may not use his production allowances to produce a quantity of controlled substances (except Group IV substances produced pursuant to transformation allowances) unless he holds under the authority of this part at the same time consumption allowances sufficient to cover that quantity of controlled substances, nor may he use his consumption allowances to produce a quantity of controlled substances unless he holds under authority of this part at the same time production allowances sufficient to cover that quantity of controlled substances. However, consumption allowances alone are required to import controlled substances. Transformation allowances are not used in conjunction with either production or consumption allowances, and may be used to either produce or import Group IV controlled substances.

(e) No person may import any quantity of Group I or Group II controlled substances from any nation not listed in appendix B to this subpart (Parties to the Montreal Protocol), unless that nation is listed in appendix C to this subpart (Nations Complying with, But Not Party to, the Protocol). Every kilogram of controlled substances imported in contravention of this regulation constitutes a separate violation of this regulation.

§ 82.5 Apportionment of baseline production allowances.

Persons who produced controlled substances in Group I or Group II in 1986 are apportioned baseline production allowances as set forth in paragraphs (a) and (b) of this section. Persons who produced controlled substances in Group III, IV or V in 1989 are apportioned baseline production allowances as set forth in paragraphs (c), (d) and (e) of this section. Persons who produced class II chemicals are apportioned baseline production allowances as set forth in paragraph (f) of this section.

(a) For Group I controlled substances:

Controlled substance	Person	Allowances (kg)
CFC-11	Allied-Signal, Inc	23082358
	Atochem North America.	21821500
	E.I. DuPont de Nemours & Co.	33830000
	Laroche Chemicals	12856364
CFC-12	Allied-Signal, Inc	35699776
	Atochem North America.	31089807
	E.I. DuPont de Nemours & Co.	64849000
	Laroche Chemicals	15330909
CFC-113	Allied-Signal, Inc	21788896
	E.I. DuPont de Nemours & Co.	58553000
CFC-114	Allied-Signal, Inc	1488569
	E.I. DuPont de Nemours & Co.	4194000
CFC-115	E.I. DuPont de Nemours & Co.	4176000

(b) For Group II controlled substances:

Controlled substance	Person	Allowances (kg)
Halon-1211	Great Lakes Chemical Corp.	826487
	ICI Americas, Inc	2135484
Halon-1301	E.I. DuPont de Nemours & Co.	3220000
	Great Lakes Chemical Corp.	1766850
Halon-2402		

(c) For Group III controlled substances:

Controlled substance	Person	Allowances (kg)
CFC-13	Allied-Signal, Inc	127125
	Atochem North America.	3992
	E.I. DuPont de Nemours & Co.	187831
	Great Lakes Chemical Corp.	56381
	Laroche Chemicals	29025
CFC-111		
CFC-112		
CFC-211	E.I. DuPont de Nemours & Co.	11
CFC-212	E.I. DuPont de Nemours & Co.	11
CFC-213	E.I. DuPont de Nemours & Co.	11
CFC-214	E.I. Dupont de Nemours & Co.	11
CFC-215	E.I. Dupont de Nemours & Co.	511
CFC-216	E.I. DuPont de Nemours & Co.	170574
CFC-217	E.I. DuPont de Nemours & Co.	511

(d) For Group IV controlled substances:

Controlled substance	Person	Allowances (kg)
CCl_4	Akzo Chemicals, Inc	10309567
	Degussa Corporation.	26702
	Dow Chemical Company, USA.	24636018
	E.I. DuPont de Nemours & Co.	9153
	Hanlin Chemicals-WV, Inc.	222859
	ICI Americas, Inc	858721
	Occidental Chemical Corp.	836751
	Vulcan Chemicals	20063164

(e) For Group V controlled substances:

Controlled substance	Person	Allowances (kg)
Methyl Chloroform	Dow Chemical Company, USA.	168030117
	E.I. DuPont de Nemours & Co.	2
	PPG Industries, Inc	57450719
	Vulcan Chemicals	89689064

(f) For class II controlled substances: (Reserved)

§ 82.6 Apportionment of baseline consumption allowances.

Persons who produced, imported, or produced and imported controlled substances in Group I or Group II in 1986 are apportioned chemical-specific baseline consumption allowances as set forth in paragraphs (a) and (b) of this section. Persons who produced, imported or produced and imported controlled substances in Group III, Group IV or Group V in 1989 are apportioned chemical-specific baseline consumption allowances as set forth in paragraphs (c), (d) and (e) of this section. For persons who produced, imported or produced and imported class II chemicals are apportioned chemical-specific baseline consumption allowances set forth in paragraph (f) of this section.

(a) For Group I controlled substances:

Controlled substance	Person	Allowances (kg)
CFC-11	Allied-Signal, Inc	22683833
	Atochem North America.	21740194
	E.I. DuPont de Nemours & Co.	32054283
	Hoechst Celanese Corporation.	185396
	ICI Americas, Inc	1673436
	Kali-Chemie Corporation.	82500
	Laroche Chemicals	12695726
	National Refrigerants, Inc.	693707
	Refricentro, Inc	160697
	Sumitomo Corporation of America.	5800
CFC-12	Allied-Signal, Inc	35236397
	Atochem North America.	32403869
	E.I. DuPont de Nemours & Co.	61098726
	Hoechst Celanese Corporation.	138865
	ICI Americas, Inc	1264980
	Kali-Chemie Corporation.	355440
	Laroche Chemicals	15281553
	National Refrigerants, Inc.	2375384
	Refricentro, Inc	242526
CFC-113	Allied-Signal, Inc	18241928
	Atochem North America.	244908
	E.I. DuPont de Nemours & Co.	49602858
	Holchem	265199
	ICI Americas, Inc	2399700
	Refricentro, Inc	37385
	Sumitomo Corporation of America.	280163
CFC-114	Allied-Signal, Inc	1429582
	Atochem North America.	22880
	E.I. DuPont de Nemours & Co.	3686103
	ICI Americas, Inc	32930
CFC-115	Atochem North America.	633007
	E.I. Dupont de Nemours & Co.	2764109
	Hoechst Celanese Corporation.	8893
	ICI Americas, Inc	2366351
	Laroche Chemicals	135520
	Refricentro, Inc	27337

(b) For Group II controlled substances:

Controlled substance	Person	Allowances (kg)
Halon-1211	Atochem North America.	411292
	Great Lakes Chemical Corp.	772775
	ICI Americas, Inc	2116641
	Kali-Chemie Corporation.	330000
Halon-1301	Atochem North America.	89255
	E.I. DuPont de Nemours & Co.	2772917
	Great Lakes Chemical Corp.	1744132
	Kali-Chemie Corporation.	54380
Halon-2402	Ausimont	34400
	Great Lakes Chemical Corp.	15900

(c) For Group III controlled substances:

Controlled substance	Person	Allowances (kg)
CFC-13	Allied-Signal, Inc	127125
	Atochem North America.	3992
	E.I. DuPont de Nemours & Co.	158509
	Great Lakes Chemical Corp.	56239
	ICI Americas, Inc	5855
	Laroche Chemicals	29025
	National Refrigerants, Inc.	16665
CFC-111		
CFC-112	Sumitomo Corporation of America.	5912
CFC-211	E.I. DuPont de Nemours & Co.	11
CFC-212	E.I. DuPont de Nemours & Co.	11
CFC-213	E.I. DuPont de Nemours & Co.	11
CFC-214	E.I. DuPont de Nemours & Co.	11
CFC-215	E.I. DuPont de Nemours & Co.	511
CFC-216	E.I. Dupont de Nemours & Co.	170574
CFC-217	E.I. Dupont de Nemours & Co.	511

(d) For Group IV controlled substances:

Controlled substance	Person	Allowances (kg)
CCl_4	Crescent Chemical Co.	76
	Degussa Corporation.	17151
	Dow Chemical Company, USA.	19048464
	E.I. DuPont de Nemours & Co.	36332
	Hanlin Chemicals-WV, Inc.	143148
	Hoechst Celanese Corporation.	4
	ICI Americas, Inc	1173327
	Occidental Chemical Corp.	537467
	Sumitomo Corporation of America.	13

(e) For Group V controlled substances:

Controlled substance	Person	Allowances (kg)
Methyl chloroform	3V Chemical Corp	3528
	Actex, Inc	50171
	Atochem Nortn America.	74355
	Dow Chemical Company, USA.	125638686
	E.I. DuPont de Nemours & Co.	2
	IBM	2026
	ICI Americas, Inc	14179948
	Laidlaw	420210
	PPG Industries	45254428
	Sumitomo	1954
	Unitor Ships Service, Inc.	14746
	Vulcan Chemicals	70765560

(f) For class II controlled substances: [Reserved]

§ 82.7 Grant and phased reduction of baseline production and consumption allowances for class I controlled substances.

For each control period specified in the following table, each person is granted the specified percentage of the baseline production and consumption allowances apportioned to him under §§ 82.5 and 82.6.

Date	Group IV (percent)	Group V (percent)	Other class I substances (percent)
1991	100	100	85
1992	90	100	80
1993	80	90	75
1994	70	85	65
1995	15	70	50
1996	15	50	40
1997	15	50	15
1998	15	50	15
1999	15	50	15
2000	0	20	0
2001	0	20	0
2002 and each year thereafter	0	0	0

§ 82.8 Grant and phased reduction of baseline production and consumption allowances for class II controlled substances. [Reserved]

§ 82.9 Availability of production allowances in addition to baseline production allowances.

(a) Every person apportioned baseline production allowances for class I controlled substances under § 82.5(a) is also granted potential production allowances equal to:

(1) 10 percent of his apportionment under § 82.5 for each control period ending before January 1, 2000; and

(2) 15 percent of his apportionment under § 82.5 for each control period beginning after December 31, 1999 and ending before January 1, 2011 (January 1, 2013 in the case of methyl chloroform).

A person may convert potential production allowances, either granted to him under this paragraph or obtained by him under § 82.12 (transfer of allowances), to production allowances only to the extent authorized by the Administrator under § 82.11 (Exports to Article 5 Parties). A person may obtain authorizations to convert potential production allowances to production allowances by requesting issuance of a notice under § 82.11 or by completing a transfer of authorizations under § 82.12.

(b) A company may also increase or decrease its production allowances by trading with another Party to the Protocol. A nation listed in appendix B to this subpart (Parties to the Montreal Protocol) must agree either to transfer to the person at a specified time some amount of production that the nation is permitted under the Montreal Protocol or to receive from the person at a specified time some amount of production that the person is permitted under this part.

(1) For trades from a Party, the person must obtain from the principal diplomatic representative in that nation's embassy in the United States a signed document stating that the appropriate authority within that nation has revised its production limits for the nation to equal the lesser of the maximum production that the nation is allowed under the Protocol minus the amount transferred, the maximum production that is allowed under the nation's applicable domestic law minus the amount transferred or the average of the nation's actual national production level for the three years prior to the transfer minus the production allowances transferred. The person must submit to the Administrator a transfer request that includes a true copy of this document and that sets forth the following:

(i) The identity and address of the person;

(ii) The identity of the Party;

(iii) The names and telephone numbers of contact persons for the person and for the Party;

(iv) The chemical type and level of production being transferred; and

(v) The control period(s) to which the transfer applies.

(2) For trades to a Party, a person must submit a transfer request that sets forth the following:

(i) The identity and address of the person;

(ii) The identity of the Party;

(iii) The names and telephone numbers of contact persons for the person and for the Party;

(iv) The chemical type and level of allowable production to be transferred; and

(v) The control period(s) to which the transfer applies.

(3) After receiving a transfer request that meets the requirements of paragraph (b)(2) of this section, the Administrator may, at his discretion, consider the following factors in deciding whether to approve such a transfer:

(i) Possible creation of economic hardship;

(ii) Possible effects on trade;

(iii) Potential environmental implications; and

(iv) The total amount of unexpended production allowances held by United States entities.

(4) The Administrator will issue the person a notice either granting or deducting production allowances and specifying the control periods to which the transfer applies, provided that the request meets the requirement of paragraph (b)(1) of this section for trades from Parties and paragraphs (b)(2) of this section for trades to Parties, unless the Administrator has decided to disapprove the trade under paragraph (b)(3) of this section for trades to Parties. For a trade from a Party, the Administrator will issue a notice that revises the production allowances held by the person to equal the unexpended production allowances held by the person under this part plus the level of allowable production transferred from the Party. For a trade to a Party, the Administrator will issue a notice that revises the production limit for the person to equal the lesser of:

(i) The unexpended production allowances held by the person under this Part minus the amount transferred; or

(ii) The unexpended production allowances held by the person under this Part minus the amount by which the United States' average annual production for the three years prior to the transfer is less than the United States' production allowable under this Part minus the amount transferred.

The change in production allowances will be effective on the date that the notice is issued.

(c) A person who does not produce controlled substances may obtain production allowances for Group I, II, III and V controlled substances equal to the level of controlled substances produced in the United States that the

person transforms in accordance with the provisions of this paragraph. A request for production allowances under this section will be considered a request for consumption allowances under § 82.10(c).

(1) A person must submit a request for production allowances that includes the following:

(i) The identity and address of the person;

(ii) The name, quantity and level of controlled substance transformed;

(iii) A copy of the invoice or receipt documenting the sale from the producer of the controlled substance to the person;

(iv) The name of the person from whom the controlled substances were purchased; and

(v) The name, quantity and verification of the commercial use of the resulting chemical.

(2) The Administrator's designated representative will review the information and documentation submitted under paragraph (c)(1) of this section and will assess the quantity of controlled substance that the documentation and information verifies were transformed. The Administrator's designated representative will issue the person production allowances equivalent to the controlled substances that the Administrator's designated representative determined were transformed. The grant of allowances will be effective on the date that the notice is issued.

(3) If the Administrator's designated representative determines that the request for production allowances does not satisfactorily meet the requirements stated in paragraph (c) of this section, the Administrator's designated representative will issue a note disallowing the request for additional production allowances. Within ten working days after receipt of notification, the Party may file a notice of appeal, with supporting reasons, with the Director, Office of Atmospheric and Indoor Air Programs, Office of Air and Radiation. The Director may affirm the disallowance or grant an allowance, as she finds appropriate in light of the available evidence.

(d) A person who produces Group IV controlled substances may obtain transformation allowances for a control period equal to the amount of Group IV controlled substances that the person can show will be transformed by another person in that control period.

(1) Such person must submit a request for transformation allowances that includes the following:

(i) The identity and address of the person;

(ii) The name and amount of the Group IV chemical to be transformed;

(iii) A copy of the Internal Revenue Service Certificate indicating that the Group IV chemical covered by the certificate is intended for transformation; and

(iv) A copy of a contract, purchase order or other document signed by a responsible corporate officer of the entity that will transform the Group IV chemical stating the amount of the Group IV chemical that will be transformed and the date by which it will be transformed.

(2) The Administrator's designated representative will review the information and documentation submitted under paragraph (d)(1) of this section and will assess the quantity of Group IV controlled substance that the documentation and information verifies will be transformed. The Administrator's designated representative will issue the person transformation allowances equivalent to the controlled substances that the Administrator's designated representative determines will be transformed. The grant of allowances will be effective on the date that the notice is issued.

(3) If the Administrator's designated representative determines that the request for transformation allowances does not satisfactorily meet the requirements stated in paragraph (d) of this section, the Administrator's designated representative will issue a notice disallowing the request for transformation allowances. Within ten working days after receipt of notification, the Party may file a notice of appeal, with supporting reasons, with the Director, Office of Atmospheric and Indoor Air Programs, Office of Air and Radiation. The Director may grant the credits or affirm the disallowance, as she finds appropriate in light of the available evidence.

§ 82.10 Availability of consumption allowances in addition to baseline consumption allowances.

(a) Any person may obtain, in accordance with the provisions of this subsection, consumption allowances equivalent to the level of controlled substances that the person has exported from the United States and its territories to any nation listed in appendix B to this subpart (Parties to the Montreal Protocol). The consumption allowance granted under this section will be valid only during the control period in which the exports departed the United States or its territories.

(1) The exporters of the controlled substances must submit to the Administrator a request for consumption allowances setting forth the following:

(i) The identities and addresses of the exporter and the recipient of the exports;

(ii) The exporter's Employer Identification Number;

(iii) The names and telephone numbers of contact persons for the exporter and the recipient;

(iv) The quantity and type of controlled substances exported, and what percentage, if any, of the controlled substances are recycled or used;

(v) The source of the controlled substance and the date purchased;

(vi) The date on which and the port from which the controlled substances were exported from the United States or its territories;

(vii) The country to which the controlled substances were exported;

(viii) The bill of lading and the invoice indicating the net quantity of controlled substances shipped and documenting the sale of the controlled substances to the purchaser; and

(ix) The commodity code of the controlled substance exported.

(2) The Administrator will review the information and documentation submitted under paragraph (a)(1) of this section, and will assess the quantity of controlled substances that the documentation verifies were exported. The Administrator will issue the exporter consumption allowances equivalent to the level of controlled substances that the Administrator determined were exported. The grant of the consumption allowances will be effective on the date the notice is issued.

(b) No consumption allowances will be granted after January 1, 1991 for exports of controlled substances to any nation not listed in appendix B to this part (Parties to the Montreal Protocol).

(c) A person who does not produce controlled substances may obtain consumption allowances for Group I, II, III and V controlled substances equal to the level of a controlled substance either produced in or imported into the United States that the person transformed in accordance with the provisions of this paragraph.

(1) A person must submit a request for consumption allowances that includes the following:

(i) The identity and address of the person;

(ii) The name and quantity of controlled substance used and entirely consumed in the manufacture of another chemical;

(iii) A copy of the invoice or receipt documenting the sale from the producer

or importer of the controlled substance to the person; and

(iv) The name, quantity and verification of the commercial use of the resulting chemical.

(2) The Administrator's designated representative will review the information and documentation submitted under paragraph (c) of this section, and will assess the quantity of controlled substance that the documentation and information verifies were used and entirely consumed in the manufacture of other chemicals. The Administrator's designated representative will issue the person consumption allowances equivalent to the level of controlled substances that the Administrator's designated representative determined were consumed. The grant of allowances will be effective on the date that the notice is issued.

(3) If the Administrator's designated representative determines that the request for consumption allowances does not satisfactorily meet the requirements stated in paragraph (c) of this section, the Administrator's designated representative will issue a note disallowing the request for additional consumption allowances. Within ten working days after receipt of notification, the Party may file a notice of appeal, with supporting reasons, with the Director, Office of Atmospheric and Indoor Air Programs, Office of Air and Radiation. The Director may affirm or vacate the disallowance. If no appeal is taken by the tenth day after notification, the disallowance will be final on that day.

§ 82.11 Exports to Article 5 Parties.

In accordance with the provisions of this section, any person may obtain authorizations to convert potential production allowances to production allowances by exporting controlled substances to nations listed in appendix E (Article 5 Parties). Authorizations obtained under this section will be valid only during the control period in which the controlled substance departed the United States or its territories. A request for authorizations under this section will be considered a request for consumption allowances under § 82.10 as well.

(a) The exporter must submit to the Administrator a request for authority to convert potential production allowance to production allowances. That request must set forth the following:

(1) The identities and addresses of the exporter and the recipient of the exports;

(2) The exporter's Employee Identification Number;

(3) The names and telephone numbers of contact persons for the exporter and for the recipient;

(4) The quantity and the type of controlled substances exported, its source and date purchased, and what percentage, if any, of the controlled substances that are recycled or used;

(5) The date on which and the port from which the controlled substances were exported from the United States or its territories;

(6) The country to which the controlled substances were exported;

(7) A copy of the bill of lading and invoice indicating the net quantity shipped and documenting the sale of the controlled substances to the recipient;

(8) The commodity code of the controlled substance exported; and

(9) A copy of the contract covering the sale of the controlled substances to the recipient that contains provisions forbidding the reexport of the controlled substance in bulk form and subjecting the recipient or any transferee of the recipient to liquidated damages equal to the resale price of the controlled substances if they are reexported in bulk form.

(b) The Administrator will review the information and documentation submitted under paragraph (a) of this section, and assess the quantity of controlled substances that the documentation verifies were exported to an Article 5 Party. Based on that assessment, the Administrator will issue the exporter a notice authorizing the conversion of a specified quantity of potential production allowances to production allowances in a specified control year, and granting consumption allowances in the same amount for the same control year. The authorizations may be used to convert potential production allowances to production allowances as soon as the date on which the notice is issued.

§ 82.12 Transfers.

(a) *Intercompany transfers.* Any person ("transferor") may transfer to any other person ("transferee") any amount of the transferor's consumption allowances, production allowances, potential production allowances, or authorizations to convert potential production allowances to production allowances (but not transformation allowances), as follows:

(1) The transferor must submit to the Administrator's designated representative a transfer claim setting forth the following:

(i) The identities and addresses of the transferor and the transferee;

(ii) The name and telephone numbers of contact persons for the transferor and the transferee;

(iii) The type of allowances or authorizations being transferred, including the names of the controlled substances for which allowances are to be transferred;

(iv) The group of controlled substances to which the allowances or authorizations being transferred pertains;

(v) The amount of allowances or authorizations being transferred;

(vi) The control period(s) for which the allowances or authorizations are being transferred; and

(vii) The amount of unexpended allowances or authorizations of the type and for the control period being transferred that the transferor holds under authority of this part as of the date the claim is submitted to EPA.

(2) The Administrator's designated representative will determine whether the records maintained by EPA, taking into account any previous transfers and any production, imports or exports of controlled substances reported by the transferor possesses, as of the date the transfer claim is processed, unexpended allowances or authorizations sufficient to cover the transfer claim (i.e., the amount to be transferred plus one percent of that amount). Within three working days of receiving a complete transfer claim, the Administrator's designated representative will take action to notify the transferor and transferee as follows:

(i) If EPA's records show that the transferor has sufficient unexpended allowances or authorizations to cover the transfer claim or if review of available information is insufficient to make a determination, the Administrator's representative will issue a notice indicating that EPA does not object to the transfer and will reduce the transferor's balance of unexpended allowances or authorizations by the amount to be transferred plus one percent of that amount. When EPA issues a no objection notice, the transferor and the transferee may proceed with the transfer. However, if EPA ultimately finds that the transferor did not have sufficient unexpended allowances or authorizations to cover the claim, the transferor and transferee will be held liable for any violations of the regulations of this part that occur as a result of, or in conjunction with, the improper transfer.

(ii) If EPA's records show that the transferor has insufficient unexpended allowances or authorizations to cover the transfer claim, or that the transferor

has failed to respond to one or more Agency requests to supply information needed to make a determination, the Administrator's designated representative will issue a notice disallowing the transfer. Within 10 working days after receipt of notification, either party may file a notice of appeal, with supporting reasons, with the Director, Office of Atmospheric and Indoor Air Programs, Office of Air and Radiation. The Director may affirm or vacate the disallowance. If no appeal is taken by the tenth working day after notification, the disallowance shall be final on that day.

(3) In the event that the Administrator's designated representative does not respond to a transfer claim within the three working days specified in paragraph (b) of this section, the transferor and transferee may proceed with the transfer. EPA will reduce the transferor's balance of unexpended allowances by the amount to be transferred plus one percent of that amount. However, if EPA ultimately finds that the transferor did not have sufficient unexpended allowances or authorizations to cover the claims, the transferor and transferee will be held liable for any violations of the regulations of this part that occur as a result of, or in conjunction with, the improper transfer.

(b) *Inter-pollutant conversions.* Any person ("convertor") may convert consumption allowances, production allowances, potential production allowances, or authorizations to convert potential production allowances to production allowances (but not transformation allowances) for one controlled substance to the same type of allowance for another controlled substance within the group of controlled substances as the first as follows:

(1) The convertor must submit to the Administrator's designated representative a conversion claim setting forth the following:

(i) The identity and address of the convertor;

(ii) The name and telephone number of a contact person for the convertor;

(iii) The type of allowances or authorizations being converted, including the names of the controlled substances for which allowances are to be converted;

(iv) The group of controlled substances to which the allowances or authorizations being converted pertains;

(v) The amount and type of allowances to be converted;

(vi) The amount of allowances to be subtracted from the convertor's unexpended allowances or authorizations for the first controlled substance, to be equal to 101 percent of the amount of allowances converted;

(vii) The amount of allowances or authorizations to be added to the convertor's unexpended allowances or authorizations for the second controlled substance, to be equal to the amount of allowances for the first controlled substance being converted multiplied by the quotient of the ozone depletion factor of the first controlled substance divided by the ozone depletion factor of the second controlled substance, as listed in appendix A of subpart A;

(viii) The control period(s) for which the allowances or authorizations are being converted; and

(ix) The amount of unexpended allowances or authorizations of the type and for the control period being converted that the convertor holds under authority of this part as of the date the claim is submitted to EPA.

(2) The Administrator's designated representative will determine whether the records maintained by EPA, taking into account any previous conversions, any transfers and any production, imports or exports of controlled substances reported by the convertor possesses, as of the date the conversion claim is processed, unexpended allowances or authorizations sufficient to cover the conversion claim (i.e., the amount to be converted plus one percent of that amount). Within three working days of receiving a complete conversion claim, the Administrator's designated representative will take action to notify the convertor as follows:

(i) If EPA's records show that the convertor has sufficient unexpended allowances or authorizations to cover the conversion claim or if review of available information is insufficient to make a determination, the Administrator's representative will issue a notice indicating that EPA does not object to the conversion and will reduce the convertor's balance of unexpended allowances or authorizations by the amount to be converted plus one percent of that amount. When EPA issues a no objection notice, the convertor may proceed with the conversion. However, if EPA ultimately finds that the convertor did not have sufficient unexpended allowances or authorizations to cover the claim, the convertor will be held liable for any violations of the regulations of this part that occur as a result of, or in conjunction with, the improper conversion.

(ii) If EPA's records show that the convertor has insufficient unexpended allowances or authorizations to cover the conversion claim, or that the convertor has failed to respond to one or more Agency requests to supply information needed to make a determination, the Administrator's designated representative will issue a notice disallowing the conversion. Within 10 working days after receipt of notification, the convertor may file a notice of appeal, with supporting reasons, with the Director, Office of Atmospheric and Indoor Air Programs, Office of Air and Radiation. The Director may affirm or vacate the disallowance. If no appeal is taken by the tenth working day after notification, the disallowance shall be final on that day.

(3) In the event that the Administrator's designated representative does not respond to a conversion claim within the three working days specified in paragraph (b) of this section, the convertor may proceed with the conversion. EPA will reduce the convertor's balance of unexpended allowances by the amount to be converted plus one percent of that amount. However, if EPA ultimately finds that the convertor did not have sufficient unexpended allowances or authorizations to cover the claims, the convertor will be held liable for any violations of the regulations of this part that occur as a result of, or in conjunction with, the improper conversion.

§ 82.13 Record-keeping and reporting requirements.

(a) Unless otherwise specified, the record-keeping and reporting requirements set forth in this section take effect on January 1, 1992.

(b) Reports and records required by this section may be used for purposes of compliance determinations. These requirements are not intended as a limitation on the use of other evidence admissible under the Federal Rules of Evidence.

(c) Unless otherwise specified, reports required by this section must be mailed to the Administrator within 45 days of the end of the applicable reporting period.

(d) Records and copies of reports required by this section must be retained for three years.

(e) In reports required by this section, quantities of controlled substances must be stated in terms of kilograms.

(f) Every person ("producer") who will produce controlled substances during a control period must comply with the following record-keeping and reporting requirements:

(1) Within 120 days of (the date this rule is published in the **Federal Register**)

or within 120 days of the date the producer first produces a controlled substance, whichever is later, every producer that has not already done so must submit to the Administrator a report describing:

(i) The method by which the producer in practice measures daily quantities of controlled substances produced;

(ii) Conversion factors by which the daily records as currently maintained can be converted into kilograms of controlled substances produced, including any constants or assumptions used in making those calculations (e.g., tank specifications, ambient temperature or pressure, density of the controlled substance, etc.);

(iii) Internal accounting procedures for determining plant-wide production;

(iv) The quantity of any fugitive losses accounted for in the production figures; and

(v) The estimated percent efficiency of the production process for the controlled substance.

Within 60 days of any change in the measurement procedures or the information specified in the above report, the producer must submit a report specifying the revised data or procedures to the Administrator.

(2) Every producer must maintain the following:

(i) dated records of the quantity of each of the controlled substances produced at each facility;

(ii) Dated records of the quantity of controlled substances used as feedstocks in the manufacture of controlled substances and in the manufacture of non-controlled substances and any controlled substance introduced into the production process of the same controlled substance at each facility;

(iii) Dated records identifying the quantity of each chemical not a controlled substance produced within each facility also producing one or more controlled substances;

(iv) Dated records of the quantity of raw materials and feedstock chemicals used at each facility for the production of controlled substances.

(v) Dated records of the shipments of controlled substances produced at each plant;

(vi) The quantity of controlled substances, the date received, and names and addresses of the source of recyclable or recoverable materials containing controlled substances which are recovered at each plant:

(vii) Records of the date, the controlled substance, and the estimated quantity of any spill or release of a controlled substance that equals or exceeds 100 pounds.

(3) For each quarter, each producer must provide the Administrator with a report containing the following information:

(i) The production by plant in that quarter of each controlled substance, specifying the quantity of any controlled substance used for feedstock purposes for controlled and non-controlled substances for each plant and totaled by class I controlled substances for all plants owned by the producer;

(ii) The levels of production (expended allowances) for all class I controlled substances for each plant and totaled for all plants for that quarter and totaled for the control period to date;

(iii) From each plant, the total shipments of each controlled substance produced at that plant in the quarter.

(iv) The producer's total of expended and unexpended consumption allowances, potential production allowances, production allowances and authorizations to convert potential production allowances to production allowances, as of the end of that quarter;

(v) The quantity, the date received, and names and addresses of the source of recyclable or recoverable materials containing the controlled substance which are recovered at each plant; and

(4) For any person who fails to maintain the records required by this paragraph, the Administrator may assume that the person has produced at full capacity during the period for which records were not kept, for purposes of determining whether the person has violated the prohibitions at § 82.4.

(g) Importers of controlled substances during a control period must comply with the following record-keeping and reporting requirements:

(1) Any importer must maintain the following records:

(i) The quantity of each controlled substance imported, either alone or in mixtures, including the percentage of the mixture which consists of controlled substances;

(ii) The date on which the controlled substances were imported;

(iii) The port of entry through which the controlled substances passed;

(iv) The country from which the imported controlled substances were imported;

(v) The port of exit;

(vi) The commodity code for the controlled substances shipped;

(vii) The importer number for the shipment;

(viii) A copy of the bill of lading for the import;

(ix) The invoice for the import; and

(x) The U.S. Customs Entry Summary Form.

(2) For each quarter, every importer must submit to the Administrator a report containing the following information:

(i) Summaries of the records required in paragraph (g)(1) (i) through (vii) of this section for the previous quarter;

(ii) The total quantity imported in kilograms of each controlled substance for that quarter;

(iii) The levels of import (expended allowances) of controlled substances for that quarter and totaled by chemical for the control-period-to-date; and

(iv) The importer's total sum of expended and unexpended consumption allowances by chemical at the end of that quarter.

(h) For any exports of controlled substances not reported under § 82.10 (additional consumption allowances) or § 82.11 (Exports to Parties), the exporter who exported the controlled substances must submit to the Administrator the following information within 45 days of the end of the control period in which the unreported exports left the United States:

(1) The names and addresses of the exporter and the recipient of the exports;

(2) The exporter's Employee Identification Number;

(3) The type and quantity of controlled substances exported and what percentage, if any, of the controlled substances that are recycled or used;

(4) The date on which and the port from which the controlled substances were exported from the United States or its territories;

(5) The country to which the controlled substances were exported; and

(6) The commodity code of the controlled substance shipped.

(i) Every person who has requested additional production allowances under § 82.9(c) or consumption allowances under § 82.10(c), or persons who transform controlled substances in Group IV must maintain the following:

(1) Dated records of the quantity and level of controlled substance used and entirely consumed in the manufacture of another chemical;

(2) Copies of the invoices or receipts documenting the sale from the producer or importer of the controlled substance to the person;

(3) Dated records of the names, commercial use and quantities of the resulting chemical(s); and

(4) Dated records of shipments to purchasers of the resulting chemical(s).

(j) For every quarter, within 45 days of the end of the quarter, every person who

transforms Group IV chemicals must report the following:

(1) The names of the persons from whom they have purchased controlled substances; and

(2) The amounts purchased and transformed from each company.

(k) For every control period, every person requesting an exemption for unavoidable, coincidental production of carbon tetrachloride as a by-product that is immediately destroyed must submit to the Administrator's designated representative within 45 days of the beginning of the control period the following information:

(1) A description of the process of which carbon tetrachloride is a by-product;

(2) The name of the main chemical produced in the process;

(3) A description of the destruction technology to be used to dispose of the carbon tetrachloride; and

(4) An estimate of the annual production and subsequent destruction of the carbon tetrachloride.

(l) If the Administrator's designated representative finds based on the submitted information that the carbon tetrachloride for which the exemption is sought is an unavoidable, coincidental by-product of the production of another chemical and that maximum available control technology will be used to destroy it, he or she will either exempt this production from control or provide allowances for the production and consumption of the product based on the producer's 1989 production of the carbon tetrachloride as a result of the described process. Every person who produces, imports or exports class II chemicals must report its annual level of production, imports and exports of these chemicals within 45 days of the end of each control period.

Appendix A to Subpart A—Controlled Substances and Ozone Depletion Weights

Controlled substance	Ozone depletion weight
A.1.—Class I Controlled Substances	
A. Group I:	
$CFCl_3$-Trichlorofluoromethane (CFC-11)	1.0
CCl_2F_2-Dichlorodifluoromethane (CFC-12)	1.0
$CC1_2F$-$CClF_2$-Trichlorotrifluoroethane (CFC-113)	0.8
CF_2Cl-$CClF_2$-Dichlorotetrafluoroethane (CFC-114)	1.0
$CClF_2$-CF_3-(Mono)chloropentafluoroethane (CFC-115)	0.6
B. Group II:	
CF_2BrCl-Bromochlorodifluoroethane (halon 1211)	3.0
$C_2F_4Br_2$-Bromotrifluoroethane (halon 1301)	10.0
$C_2F_4Br_2$-Dibromotetrafluoroethane (halon 2402)	6.0
C. Group III:	
CF_3Cl-Chlorotrifluoromethane (CFC-13)	1.0
C_2FCl_5-(CFC-111)	1.0
$C_2F_2Cl_4$-(CFC-112)	1.0
C_3FCl_7-(CFC-211)	1.0
$C_3F_2Cl_6$-(CFC-212)	1.0
$C_3F_3Cl_5$-(CFC-213)	1.0
$C_3F_4Cl_4$-(CFC-214)	1.0
$C_3F_5Cl_3$-(CFC-215)	1.0
$C_3F_6Cl_2$-(CFC-216)	1.0
C_3F_7Cl-(CFC-217)	1.0
D. Group IV:	
CCl_4-Carbon Tetrachloride	1.1
E. Group V:	
$C_2H_3Cl_3$-1,1,1-Trichloroethane (Methyl chloroform)	.1
A.2.—Class II Controlled Substances	
$CHFCl_2$-Dichlorofluoromethane (HCFC-21)	[res.]
CHF_2Cl-Chlorodifluoromethane (HCFC-22)	0.05
CH_2FCl-Chlorofluoromethane (HCFC-31)	[res.]
C_2HFCl_4-(HCFC-121)	[res.]
$C_2HF_2Cl_3$-(HCFC-122)	[res.]
$C_2HF_3Cl_2$-(HCFC-123)	0.02
C_2HF_4Cl-(HCFC-124)	0.02
$C_2H_2FCl_3$-(HCFC-131)	[res.]
$C_2H_2F_2Cl_2$-(HCFC-132b)	[res.]
$C_2H_2F_3Cl$-(HCFC-133a)	[res.]
$C_2H_3FCl_2$-(HCFC-141b)	0.12
$C_2H_3F_2Cl$-(HCFC-142b)	0.06
C_3HFCl_6-(HCFC-221)	[res.]
$C_3HF_2Cl_5$-(HCFC-222)	[res.]
$C_3HF_3Cl_4$-(HCFC-223)	[res.]
$C_3HF_4Cl_3$-(HCFC-224)	[res.]
$C_3HF_5Cl_2$ (HCFC-225ca)	[res.]
(HCFC-225cb)	[res.]
C_3HF_6Cl-(HCFC-226)	[res.]
$C_3H_2FCl_5$-(HCFC-231)	[res.]
$C_3H_2F_2Cl_4$-(HCFC-232)	[res.]
$C_3H_2F_3Cl_3$-(HCFC-233)	[res.]
$C_3H_2F_4Cl_2$-(HCFC-234)	[res.]
$C_3H_2F_5Cl$-(HCFC-235)	[res.]
$C_3H_3FCl_4$-(HCFC-241)	[res.]
$C_3H_3F_2Cl_3$-(HCFC-242)	[res.]
$C_3H_3F_3Cl_2$-(HCFC-243)	[res.]
$C_3H_3F_4Cl$-(HCFC-244)	[res.]
$C_3H_4FCl_3$-(HCFC-251)	[res.]
$C_3H_4F_2Cl_2$-(HCFC-252)	[res.]
$C_3H_4F_3Cl$-(HCFC-253)	[res.]
$C_3H_5FCl_2$-(HCFC-261)	[res.]
$C_3H_5F_2Cl$-(HCFC-262)	[res.]
C_3H_6FCl-(HCFC-271)	[res.]
All isomers of the above chemicals	[res.]

Appendix B to Subpart A-Parties to the Montreal Protocol

Parties to the Montreal Protocol: Argentina, Australia, Austria, Bahrain, Bangladesh, Belgium, Brazil, Bulgaria, Burkina Faso, Byelorussian Soviet Socialist Republic, Cameroon, Canada, Chile, Costa Rica, Czechoslovakia, Denmark, Ecuador, Egypt, European Economic Community, Fiji, Finland, France, Gambia, Germany, Ghana, Greece, Guatemala, Hungary, Iceland, Iran, Ireland, Italy, Japan, Jordan, Kenya, Libyan Arab Jamahiriya, Liechtenstein, Luxembourg, Malawi, Malaysia, Maldives, Malta, Mexico, Netherlands, New Zealand, Nigeria, Norway, Panama, Philippines, Poland, Portugal, Singapore, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Syrian Arab Republic, Thailand, Togo, Trinidad & Tobago, Tunisia, Uganda, Ukrainian Soviet Socialist Republic, United Arab Emirates, United Kingdom, United Soviet Socialist Republics, United States, Uruguay, Venezuela, Yugoslavia, Zambia.

Appendix C to Subpart A-Nations Complying With, But Not Parties To, The Protocol [Reserved]

Appendix D to Subpart A-Article 5 Parties

Argentina, Bangladesh, Brazil, Burkina Faso, Cameroon, Chile, Costa Rica, Ecuador, Egypt, Fiji, Gambia, Ghana, Guatemala, Iran, Jordan, Kenya, Libyan Arab Jamahiriya, Malawi, Malaysia, Maldives, Mexico, Nigeria, Panama, Philippines, Sri Lanka, Syrian Arab Republic, Thailand, Togo, Trinidad and Tobago, Tunisia, Uganda, Uruguay, Venezuela, Yugoslavia, Zambia.

[FR Doc. 91-23108 Filed 9-27-91; 8:45 am]

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Monday
September 30, 1991

Part IV

General Accounting Office

4 CFR Parts 91, 92, and 93

Standards for Waiver of Claims for Erroneous Payments of Pay and Allowances; Final Rule

GENERAL ACCOUNTING OFFICE

4 CFR Parts 91, 92, and 93

Standards for Waiver of Claims for Erroneous Payments of Pay and Allowances

AGENCY: General Accounting Office.

ACTION: Final rule.

SUMMARY: This rule updates the General Accounting Office's waiver regulations at 4 CFR parts 91–93 to: (1) Bring these regulations into conformance with existing administrative practices of the General Accounting Office; and (2) implement the provisions of Public Law 99–224 and Public Law 100–702.

EFFECTIVE DATE: September 30, 1991.

FOR FURTHER INFORMATION CONTACT: Robert L. Higgins, Associate General Counsel, 202–275–6410.

SUPPLEMENTARY INFORMATION:

Background

On November 30, 1990, the General Accounting Office published a proposed rule (55 FR 49624), with request for comments, to implement legislation extending the waiver statutes (5 U.S.C. 5584, 10 U.S.C. 2774, and 32 U.S.C. 716) to include erroneous payments of travel, transportation, and relocation expenses and allowances and extending waiver authority to the claims of judicial branch employees. The preamble to the proposed rule included a section-by-section analysis. GAO received comments from the National Treasury Employees Union (NTEU) and four federal agencies. As a result of the comments, a number of provisions were clarified or, in some cases, removed as being superfluous or unnecessarily burdensome to agencies. There are no substantive changes in GAO's standards for evaluating waiver claims.

Discussion of Comments and Changes to the Proposed Rule

Proposed § 92.2 is removed, and the remaining sections are redesignated accordingly. That section had proposed that an application for waiver may be suspended and collection efforts terminated pursuant to the Federal Claims Collection Standards (FCCS), 4 CFR part 104, when the cost of processing the application for waiver is likely to exceed the amount recoverable on the claim and there are no countervailing Government policies. The Department of Veterans Affairs inquired whether agencies may use the authority contained in the Federal Claims Collection Standards to terminate claims over $500 that the agencies might otherwise waive but for the jurisdictional limits in the waiver statutes. They may not. Claims collection may be terminated under the Federal Claims Collection Standards only when a claim meets the criteria contained in those standards. Moreover, regulations to implement the Federal Claims Collection Act must be issued jointly by the Comptroller General and the Attorney General. 31 U.S.C. 3711(e)(2). We chose to remove the proposed section rather than to initiate a new round of rulemaking.

Redesignated § 92.2(c) (proposed § 92.3(c)) is amended to clarify that an agency or department need submit to the GAO only those claims within GAO's jurisdiction: claims aggregating more than $500, or such other amount as may be provided by statute, for which the agency recommends approval and all appeals, regardless of amount. Claims of $500 or less that the agency approves need not be submitted to GAO.

The Department of the Air Force questioned whether, for the purpose of providing GAO with a waiver applicant's address as required in proposed § 92.4(a)(1) (redesignated § 92.3(a)(1)), the agency may use the address of the accounting and finance office through which the applicant had originally filed a waiver application. The Air Force noted that requiring the agency to include the claimant's home address would be especially difficult for agencies with centralized waiver processing, particularly those with military members subject to frequent changes of station. Although we prefer an applicant's home address, we have no objection to an administrative office as an applicant's address in those cases when the home address is not readily available or is frequently changing.

At the suggestion of the NTEU, redesignated § 92.3(a)(5) (proposed § 92.4(a)(5)) is amended to require agencies to include in their reports the agency's response to any steps the applicant took to bring the matter to the agency's attention.

Redesignated § 92.3(a)(11) (proposed § 92.4(a)(11)) is removed as being unnecessary. It would have required agencies to document what action, if any, had been taken to obtain repayment of the claim.

Because it was considered too burdensome for agencies to implement, the final rule does not incorporate NTEU's suggestion that the applicant be given a copy of the agency report required by redesignated § 92.3 (proposed § 92.4).

However, redesignated § 92.4(b) (proposed § 92.5(b)) is amended to require that the written notice to the applicant of the disposition of the application include the basis for the decision. As proposed, the section would have required that the agency notify the employee or member only whether the application had been granted, denied, or referred to the GAO.

Redesignated § 92.6(a) (proposed § 92.7(a)) is amended to require refunds of amounts repaid and waived to be charged to the account into which the agency deposited the collection, instead of the appropriation from which the erroneous payment was made.

Redesignated § 92.7 (proposed § 92.8) is amended to require agencies to retain the written record of waiver action for 6 years and 3 months. The proposed section had not included a cutoff date.

Redesignated § 92.8 (proposed § 92.9) is amended to eliminate the requirement of an annual written report to GAO contained in paragraph (b). However, agencies still are required to maintain a register of waiver actions subject to GAO review. This eliminates a burdensome requirement on agencies while preserving GAO's ability to carry out its oversight responsibilities.

Redesignated § 92.9 (proposed § 92.10) deletes paragraph (a) as being unnecessary.

The substantive provisions of part 93 are now contained in §§ 91.1 and 91.6 and that part is reserved for future use.

List of Subjects

4 CFR Part 91

Accounting, Claims, Government employees, Military personnel, Relocation expenses, Travel and transportation expenses, Wages.

4 CFR Part 92

Accounting, Administrative practice and procedure, Claims, Government employees, Investigations, Military personnel, Wages.

4 CFR Part 93

Accounting, Claims, Government employees, Military personnel, Wages.

For the reasons set out in the preamble, parts 91, 92, and 93 of title 4, chapter I, subchapter G, Code of Federal Regulations, are amended as follows.

SUBCHAPTER G—STANDARDS FOR WAIVER OF CLAIMS FOR ERRONEOUS PAYMENTS OF PAY AND ALLOWANCES, AND OF TRAVEL, TRANSPORTATION, AND RELOCATION EXPENSES AND ALLOWANCES

1. The title of subchapter G is revised to read as set forth above.

2. Part 91 is revised to read as follows:

PART 91—STANDARDS FOR WAIVER

Sec.
91.1 Purpose and scope of subchapter.
91.2 Definitions.
91.3 Exclusions.
91.4 Authority to waive.
91.5 Conditions for waiver.
91.6 Effect of waiver.

Authority: 31 U.S.C. 711. Interpret or apply 5 U.S.C. 5584, 10 U.S.C. 2774, and 32 U.S.C. 716, as amended by Pub. L. 99–224, 99 Stat. 1741, December 28, 1985, and by Title X, sec. 1009, Pub. L. 100–702, 102 Stat. 4667, November 19, 1988.

§ 91.1 Purpose and scope of subchapter.

This subchapter implements 5 U.S.C. 5584, 10 U.S.C. 2774, and 32 U.S.C. 716. It prescribes the effect of and the standards and procedures for waiver of claims of the United States arising out of erroneous payments of pay and allowances, and erroneous payments of travel, transportation, and relocation expenses and allowances, made to or on behalf of employees of an agency or members of the uniformed services, including the National Guard, the collection of which would be against equity and good conscience and not in the best interests of the United States. These regulations do not affect any authority under any other statute to litigate, settle, compromise, or waive any claim of the United States.

§ 91.2 Definitions.

(a) *Agency* means—

(1) An executive agency as defined in 5 U.S.C. 105, including the General Accounting Office,

(2) The Government Printing Office,

(3) The Library of Congress,

(4) The Office of the Architect of the Capitol,

(5) The Botanic Garden, and

(6) The Administrative Office of the United States Courts, the Federal Judicial Center, and any of the courts set forth in section 610 of title 28, U.S. Code. Section 610 defines "courts" to include the courts of appeals and district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, the District Court of the Virgin Islands, the United States Claims Court and the Court of International Trade.

(b) *Secretary concerned* shall have the same meaning as it does in section 101(5) of title 37, U.S. Code.

(c) *Head of an agency* means the head of each agency listed in paragraphs (a)(1) through (5) of this section and the Director, Administrative Office of the United States Courts, for the agencies and courts listed in paragraph (a)(6) of this section.

(d) *Uniformed services* means the Army, Navy, Air Force, Marine Corps, Coast Guard, National Oceanic and Atmospheric Administration, and Public Health Service.

(e) *National Guard* means the Army National Guard, the Air National Guard, the Army National Guard of the United States, and Air National Guard of the United States.

(f) *Employee* means an officer or employee as defined in 5 U.S.C. 2104 and 2105 who is or was employed in a civilian capacity by an agency.

(g) As it relates to employees, the term—

(1) *Pay* means salary, wages, pay, compensation, emoluments, and remuneration for services. It includes but is not limited to overtime pay; night, standby, irregular and hazardous duty differential; pay for Sunday and holiday work; payment for accumulated and accrued leave; and severance pay.

(2) *Allowances* includes but is not limited to payments for quarters, uniforms, and overseas cost of living expenses.

(3) *Travel, transportation or relocation expenses and allowances* includes but is not limited to items referred to in 5 U.S.C. 5701–5709 and 5721–5734, 22 U.S.C. 4081, and other comparable provisions, payment of which is made on or after December 28, 1985.

(h) *Member* means a member or former member of the uniformed services, or member or former member of the National Guard.

(i) As it relates to members, the term—

(1) *Pay* includes but is not limited to base and longevity pay, basic pay, training duty pay, special and incentive pays, readjustment pay, severance pay, mustering-out pay, retainer pay, retired pay, retirement pay, lump-sum leave pay, and equivalent pay.

(2) *Allowances* includes but is not limited to payments in lieu of subsistence, quarters, uniforms, clothing, personal money allowance, family separation allowance, and overseas station allowance.

(3) *Travel and transportation allowances* includes but is not limited to items referred to in 37 U.S.C. 404–411 and other comparable provisions, payment of which is made on or after December 28, 1985.

(j) *Aggregate amount* means the gross amount of the claim against the employee, member, or other person from whom collection is sought.

§ 91.3 Exclusions.

This part does not apply to:

(a) Employees of the District of Columbia Government,

(b) Employees of the legislative branch of the Government, except employees of the Architect of the Capitol, the Government Printing Office, the Library of Congress, the Botanic Garden, and the General Accounting Office.

§ 91.4 Authority to waive.

(a) The Comptroller General of the United States, or his designee, may grant waiver in whole or in part of a claim of the United States in any amount arising out of an erroneous payment of pay or allowances made to employees on or after July 1, 1960, and to members on or after October 2, 1972, or an erroneous payment of travel, transportation or relocation expenses or allowances made on or after December 28, 1985, to an employee or member, when all of the requirements for waiver are met. Claims referred to the Attorney General for litigation will not be considered for waiver by the Comptroller General of the United States without first having obtained the agreement of the Attorney General.

(b) The Director of the Administrative Office of the United States Courts may grant waiver in whole or in part of a claim of the United States in an amount aggregating not more than $10,000 arising out of an erroneous payment of pay or allowances or an erroneous payment of travel, transportation or relocation expenses or allowances to an officer or employee of the Administrative Office of the United States Courts, the Federal Judicial Center, or any of the courts listed in § 91.2(a)(6). This authority applies with respect to any claim arising before November 19, 1988, that was pending on that date and to any claim which arose on or after that date.

(c) The head of an agency or the Secretary concerned, or his designee—

(1) May grant waiver in whole or in part of a claim of the United States in an amount aggregating not more than $500, or such other amount as may be provided by statute, when all of the requirements for waiver are met, except that the Director of the Administrative Office of the United States Courts may grant waiver in whole or in part of a claim in an amount aggregating not more than $10,000;

(2) May deny waiver of a claim in any amount, provided that the employee, member, or other person from whom collection is sought must be advised of the right to appeal the denial to the General Accounting Office pursuant to the procedures set forth in part 92 of this subchapter; and

(3) May not grant waiver of any claim that is the subject of an exception made by the Comptroller General in the account of any accountable officer, or that has been referred to the General Accounting Office or to the Attorney General.

(d) The Government's claim against an employee or member for repayment of an advance of funds for travel or relocation expenses may be considered for waiver if—

(1) The advance was made to cover expenses erroneously authorized;

(2) The employee or member actually spent the advance in reliance on the erroneous travel authorization; and

(3) The employee or member is indebted to the Government for repayment of all or part of the amounts advanced after the advance is applied against any legitimate expenses incurred by the employee or member.

§ 91.5 Conditions for waiver.

(a) Three-year application period.

(1) An application for waiver must be received in the General Accounting Office or in the agency or department which made the erroneous payment within 3 years immediately following the date on which the erroneous payment was discovered, or in the case of certain applications received prior to July 25, 1977, as provided in 5 U.S.C. 5584(b).

(2) The employee, member, or other person from whom collection is sought shall be promptly notified of the discovery of an erroneous payment. In determining the date of discovery of an erroneous payment, all doubts are to be resolved in favor of the applicant.

(b) Waiver may be granted only when collection would be against equity and good conscience and not in the best interests of the United States. Generally, these criteria will be met by a finding that the erroneous payment occurred through administrative error and that there is no indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee, member, or other person having an interest in obtaining a waiver of the claim. Generally, waiver is precluded when an employee, member, or other person having an interest in obtaining waiver receives a significant unexplained increase in pay or allowances, or otherwise knows, or reasonably should know, that an erroneous payment has occurred, and fails to make inquiries or bring the matter to the attention of the appropriate officials. Waiver under this standard must necessarily depend upon the facts existing in the particular case. The facts upon which waiver is based should be recorded in detail and made a part of the written record in accordance with the provisions of part 92 of this subchapter.

§ 91.6 Effect of waiver.

(a) In the audit and settlement of the accounts of any accountable officer or official, full credit shall be given for any amounts with respect to which collection by the United States is waived.

(b) An erroneous payment, the collection of which is waived pursuant to this subchapter, is deemed a valid payment for all purposes.

3. Part 92 is revised to read as follows:

PART 92—PROCEDURE

Sec.

Authority: 31 U.S.C. 711. Interpret or apply 5 U.S.C. 5584, 10 U.S.C. 2774, and 32 U.S.C. 716, as amended by Pub. L. 99–224, 99 Stat. 1741, December 28, 1985, and by Title X, sec. 1009, Pub. L. 100–702, 102 Stat. 4667, November 19, 1988.

§ 92.1 Who may apply for waiver.

An application for waiver may be initiated by an employee, member, or other person from whom collection is sought, or by an authorized official of the agency or department that made the erroneous payment, or by the Comptroller General of the United States.

§ 92.2 Where to apply.

(a) An application for waiver filed by an employee, member, or other person from whom collection is sought shall be submitted to the agency or department that made the erroneous payment.

(b) After the agency or department has taken the actions required by §§ 92.3 and 92.4, the employee, member, or other person from whom collection is sought may request the agency or department to submit the matter to the General Accounting Office.

(c) The agency or department shall submit all waiver applications aggregating more than $500, or such other amount as may be provided by statute, for which the agency recommends approval and all appeals, regardless of the amount, for consideration by the General Accounting Office to: Director, Claims Group, General Government Division, U.S. General Accounting Office, Washington, DC 20548.

The submission shall include all of the information required by §§ 92.3 and 92.4, and any written comments on the matter submitted by the employee, member, or other person from whom collection is sought.

§ 92.3 Report of the agency or department.

(a) Except as provided in paragraph (b) of this section, upon initiation of an application for waiver, the agency or department shall prepare a written report containing a chronological summary of the facts and circumstances including:

(1) The names and mailing addresses of each employee, member, or other person from whom collection is sought, or a statement that the person cannot reasonably be located;

(2) The aggregate amount of the claim;

(3) The date the erroneous payment was discovered;

(4) The date the employee, member, or other person from whom collection is sought was notified of the error and a statement of the erroneous amounts paid before and after receipt of such notice;

(5) A statement as to the circumstances under which the erroneous payment was made, the applicant's knowledge of the erroneous payment and the steps the applicant took, if any, to bring the matter to the attention of the appropriate official and the agency's response;

(6) A determination as to whether there is any indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee, member, or other interested person and the factual basis for such a determination;

(7) A statement as to whether or not the erroneous payment is the subject of an exception made by the Comptroller General of the United States;

(8) Legible copies or the originals of supporting documents such as leave and earnings statements, travel authorizations and vouchers, and military orders;

(9) Statements of the employee, member, or other interested person;

(10) A statement as to the reason the agency or department believes the erroneous payment occurred and the corrective action taken to prevent the occurrence of similar erroneous payments.

(b) No written report is required where the amount involved is $100 or

less and there is no indication of fraud, misrepresentation, fault, or lack of good faith.

§ 92.4 Action by the agency or department.

Upon completion of the report, the agency or department,

(a) Shall grant or deny waiver if authorized by § 91.4 (b) or (c) of this subchapter, or refer the matter to the General Accounting Office in accordance with § 92.2(c), and;

(b) Shall provide the applicant written notice as to whether the application for waiver has been granted, denied, or referred to the General Accounting Office, provided the person can reasonably be located. When waiver is denied, the notice shall state the basis for that decision and that, upon request, the agency or department will forward an appeal to the General Accounting Office pursuant to § 92.2.

§ 92.5 Initial action by the General Accounting Office and appeals to the Comptroller General.

(a) The Claims Group will issue a letter to the agency or department granting or denying waiver in whole or in part. In every case where waiver is denied in whole or in part, the Claims Group will send a copy of the letter to the employee, member, or other person from whom collection is sought.

(b) Letters issued by the Claims Group granting or denying waiver may be appealed to the Comptroller General upon written request by the agency or department, or by the employee, member, or other person from whom collection is sought. The request should fully explain the errors alleged and the basis of the appeal and should be addressed to: Director, Claims Group, General Government Division, U.S. General Accounting Office, Washington, DC 20548.

(c) The Comptroller General will issue a decision on the appeal and will send a copy of the decision to the agency or department, and to the employee, member, or other person from whom collection is sought.

§ 92.6 Refund of amounts repaid and waived.

(a) When an employee, member, or other person from whom collection is sought has repaid all or part of a claim to the United States and all or part of the claim is subsequently waived, the application for waiver shall be construed as an application for a refund and the agency or department shall, to the extent of the waiver, refund the amount paid. However, no refund shall be paid where the employee, member, or other person from whom collection is sought cannot reasonably be located within 2 years after the effective date of the waiver. Refunds shall be charged to the account into which the agency deposited the collection.

(b) When no refund is made to an otherwise eligible person, the written record should include information as to the attempts made to locate that person and other pertinent information.

§ 92.7 Written record.

(a) The report of the agency or department, any written comments submitted by the employee, member or other person from whom collection is sought, an account of the waiver action taken and the reasons therefor, and other pertinent information such as the action taken to refund amounts repaid shall constitute the written record in each case.

(b) The agency shall retain the written record for 6 years and 3 months for review by the General Accounting Office.

(c) Upon request by an employee, member, or other person against whom collection is sought, the agency or department shall make the written record of the waiver application that pertains to them available for inspection.

§ 92.8 Register of waivers.

(a) The agency or department shall maintain a register for each of the categories listed in paragraph (b) of this section showing the disposition of each application for waiver considered pursuant to this subchapter. These registers shall be retained for review by the General Accounting Office.

(b) The register required in paragraph (a) of this section shall contain the following information:

(1) The total amount waived by the agency or department;

(2) The number and dollar amount of waiver applications granted in full;

(3) The number of waiver applications granted in part and denied in part and the dollar amount of each;

(4) The number and dollar amount of waiver applications denied in their entirety;

(5) The number of waiver applications referred to the General Accounting Office for action;

(6) The dollar amount refunded as a result of waiver action by the agency or department; and

(7) The dollar amount refunded as a result of waiver action by the General Accounting Office.

§ 92.9 Referral of claims for collection or litigation.

No claim for the recovery of an erroneous payment that is under consideration for waiver shall be referred to the Attorney General unless the time remaining for suit within the applicable limitation does not permit such waiver consideration prior to referral.

PART 93—[Removed and Reserved]

4. Part 93 is removed and reserved.

Charles A. Bowsher,

Comptroller General of the United States.

[FR Doc. 91–23337 Filed 9–27–91; 8:45 am]

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federal register

Monday
September 30, 1991

Part V

Department of Housing and Urban Development

Office of the Assistant Secretary

24 CFR Parts 882 and 887

Family Self-Sufficiency Program; Additional Grounds for Termination of Section 8 Assistance; Interim Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Parts 882 and 887

[Docket No. R-91-1564; FR-3098-I-01]

RIN 2502-AF49

Additional Grounds for Termination of Section 8 Assistance under the Family Self-Sufficiency Program

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

ACTION: Interim rule.

SUMMARY: Section 554 of the Cranston-Gonzalez National Affordable Housing Act creates the Family Self-Sufficiency (FSS) Program. Under this program, public housing agencies and Indian housing authorities are directed to use public and Indian housing development assistance, and section 8 housing assistance under the section 8 rental certificate and rental voucher programs, together with public and private resources, to provide supportive services to enable participating families to achieve economic independence and self-sufficiency. Section 554 provides that in the case of a section 8 family which participates in the FSS Program, housing assistance may be withheld or terminated if the participating family does not fulfill its obligations under the FSS program's contract of participation.

This interim rule amends 24 CFR parts 882 and 867 to include failure to comply with the requirements of the FSS contract of participation as grounds for denial or termination of assistance under the Section 8 rental certificate and rental voucher programs.

DATES: *Effective Date:* October 30, 1991. *Comment Due Date:* November 29, 1991.

FOR FURTHER INFORMATION CONTACT: Gerald J. Benoit, Director, Rental Assistance Division, Office of Elderly and Assisted Housing, room 6126, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708-0477. Hearing- or speech-impaired individuals may call HUD's TDD number (202) 708-9300. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Background

Section 554 of the Cranston-Gonzalez National Affordable Housing Act (Pub. L. 101-625, approved November 28, 1990) amended the United States Housing Act of 1937 by adding a new section 23 (42 U.S.C. 1437u) that creates the Family Self-Sufficiency (FSS) Program. Section 554 directs public housing agencies (PHAs) and Indian housing authorities (IHAs) to coordinate the use of public and Indian housing development assistance, and section 8 housing assistance under the rental certificate and rental voucher programs with public and private resources, with supportive services to enable eligible families to achieve economic independence and self-sufficiency.

The FSS program provides that a family participating in the program must enter into a "contract of participation". The contract of participation describes the supportive services the participating family will receive during the period that the family receives assistance under the program. The contract also sets forth the responsibilities of the family under the program, including the conditions or causes for termination from the FSS program. Section 554 provides that a participating family must fulfill its obligations under the contract of participation or the PHA or the IHA may withhold or terminate FSS supportive services. Section 554 further provides that in the case of a section 8 family which participates in the FSS Program, the PHA/IHA may withhold or terminate the section 8 housing assistance if the family fails to fulfill its obligations under the FSS contract of participation.

Sections 882.210 and 887.403 of the Department's regulations set forth the grounds for denial or termination of assistance for the section 8 rental certificate and rental voucher programs, respectively. This interim rule amends 24 CFR parts 882 and 887 to include failure to comply with the requirements of the FSS contract of participation as grounds for denial or termination of assistance under these programs.

Justification for Interim Rule

In general, the Department publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking at 24 CFR part 10. However, part 10 does provide for exceptions from that general rule where the agency finds good cause to omit advance notice and public participation.

Section 554 of the National Affordable Housing Act creates the Family Self-Sufficiency Program. The statute requires, for initial implementation of the FSS program, a notice of program guidelines that will be effective upon publication. (The statute further provides that within eight months of publication of the guidelines, the Department will issue final regulations for the Family Self-Sufficiency program, following public comments received concerning the guidelines.) Subsection (c)(1) of section 23 of the United States Housing Act of 1937 (added by section 554) permits a public housing agency to deny or terminate section 8 housing assistance provided in connection with the FSS program if an FSS participating family fails to fulfill its obligations under the FSS program's contract of participation. Sections 882.210 and 887.403 of the Department's regulations set forth the grounds for denial or termination of assistance under the section 8 rental certificate and rental voucher programs. Accordingly, the Department finds that there is good cause to publish these amendments to 24 CFR parts 882 and 887 that are necessary in support of operation of the FSS Program.

Public comment is being solicited on the Notice of Program Guidelines for the FSS Program. The Department also invites public comments on this rule. The comments received within the 60-day comment period will be considered during the development of a combined final rule that will supersede this interim rule and the guidelines.

Other Matters

Impact on Economy

This rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulation issued by the President on February 17, 1981. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individuals industries, Federal, State or local government, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Impact on Small Entities

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. This rule is limited to implementing additional grounds for denial or termination of assistance for the rental certificates and rental voucher programs, as provided by section 554(c) of the National Affordable Housing Act.

Regulatory Agenda

This rule was not listed in the Department's Semiannual Agenda of Regulations published in the **Federal Register** on April 22, 1991 (56 FR 17360), under Executive Order 12291 and the Regulatory Flexibility Act.

Environmental Review

An environmental finding under the National Environmental Policy Act (42 U.S.C. 4321–4347) is unnecessary because the Rental Certificate Program and the Rental Voucher Program are part of the section 8 Existing Housing Program, which is categorically excluded under HUD regulations at 24 CFR 50.20(d).

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this rule do not have federalism implications and, thus, are not subject to review under the Order. No programmatic or policy changes result from promulgation of this rule which would affect existing relationships between the Federal government and State or local governments.

Executive Order 12606, the Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule does not have a potential significant impact on family formation, maintenance, and general well-being, and, thus is not subject to review under the Order. This rule is limited to implementing additional grounds for denial or termination of assistance under the section 8 rental certificate and rental voucher programs, as provided by Section 23(c)(1) of the United States Housing Act of 1937. The Department believes that promulgation of this rule should serve as an incentive to FSS participating families to fulfill their obligations under the FSS contract of participation. The purpose of the FSS Program created by section 554 is to have a positive impact on family formation, maintenance, and well-being, by offering supportive services that will enable a family to achieve economic independence and self-sufficiency.

List of Subjects

24 CFR Part 882

Grant programs—housing and community development, Lead poisoning, Manufactured homes, Homeless, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 887

Grant programs—housing and community development, Lead poisoning, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, 24 CFR parts 882 and 887 are amended as follows:

PART 882—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—EXISTING HOUSING

1. The authority citation for 24 CFR part 882 is revised to read as follows:

Authority: Secs. 3, 5, 8, and 23, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c and 1437f); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. Section 882.210 is amended by adding a new paragraph (b)(7) and a new paragraph (d)(4) to read as follows:

§ 882.210 Grounds for denial or termination of assistance.

* * * * *

(b) * * *

(7) Has failed to comply with the requirements under the family's contract of participation in the Family Self-Sufficiency Program.

* * * * *

(d) * * *

(4) If the participant fails to comply with the requirements under the family's contract of participation in the Family Self-Sufficiency Program.

* * * * *

PART 887—HOUSING VOUCHERS

3. The authority citation for 24 CFR Part 887 is revised to read as follows:

Authority: Secs. 3, 5, 8, and 23, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, and 1437f); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

4. Section 887.403 is amended by adding a new paragraph (b)(7) and a new paragraph (c)(1)(iv) to read as follows:

§ 887.403 Grounds for PHA denial or termination of assistance.

* * * * *

(b) * * *

(7) Has failed to comply with the requirements under the family's contract of participation in the Family Self-Sufficiency Program.

(c) * * *

(1) * * *

(iv) Has failed to comply with the requirements under the family's contract of participation in the Family Self-Sufficiency Program.

* * * * *

Dated: August 28, 1991.

Arthur J. Hill,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 91–23315 Filed 9–27–91; 8:45 am]

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federal register

Monday
September 30, 1991

Part VI

Department of Housing and Urban Development

Office of the Assistant Secretary

24 CFR Subtitle B

Family Self-Sufficiency Program Guidelines

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Subtitle B

[Docket No. N-91-3270; FR-2961-N-01]

RIN 2502-AF21

Family Self-Sufficiency Program Guidelines

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of program guidelines.

SUMMARY: This notice implements the Family Self-Sufficiency (FSS) program created by section 554 of the Cranston-Gonzalez National Affordable Housing Act (NAHA). Section 554 directs Public Housing Agencies (PHAs) and Indian Housing Authorities (IHAs) to use public and Indian housing development assistance and section 8 assistance under the rental certificate and rental voucher programs together with public and private resources to provide supportive services, to enable participating families to achieve economic independence and self-sufficiency.

To assist PHAs/IHAs in implementing the FSS program, this notice provides guidelines, consistent with section 554, for operation of a local FSS program in the section 8 rental voucher, rental certificate, and public and Indian housing programs.

Also, in today's edition of the **Federal Register**, two companion Notices of Funding Availability (NOFAs) are being issued with this Notice of Program Guidelines inviting applications from PHAs/IHAs. One NOFA is for PHAs/IHAs that elect to apply for an incentive award of rental vouchers and rental certificates, and the other is for PHAs/IHAs that elect to apply for an incentive award of public and Indian housing development assistance in Federal Fiscal Year (FFY) 1991. PHAs/IHAs may submit an application for each program.

DATES: *Effective Date:* September 30, 1991.

Comments Due Date: Comments must be received by November 29, 1991. Final regulations based on this notice will be issued 8 months from the date of publication of this notice.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Rules Docket Clerk, Office of General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC. 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

To provide service to the hearing impaired, the Rules Docket Clerk may be reached via TDD by dialing (202) 708–3259.

As a convenience to commenters, the Rules Docket Clerk will accept brief public comments transmitted by facsimile ("FAX") machine. The telephone number of the FAX receiver is (202) 708–4337. Only public comments of six or fewer total pages will be accepted via FAX transmittal. This limitation is necessary in order to assure reasonable access to the equipment. Comments sent by FAX in excess of six pages will not be accepted. Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Rules Docket Clerk ((202) 708–2084). (These are not toll-free numbers.)

FOR FURTHER INFORMATION CONTACT:

For section 8 issues: Gerald J. Benoit, Director, Rental Assistance Division, Office of Elderly and Assisted Housing, room 6126. Telephone number (202) 708–0477.

For public housing issues: Janice Rattley, Director, Office of Construction, Rehabilitation and Maintenance, Public and Indian Housing, room 4136. Telephone number (202) 708–1800.

For Indian housing issues: Dominic Nessi, Director, Office of Indian Housing, room 4230. Telephone number (202) 708–1015.

The address for these contacts is the Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. The telephone numbers listed are not toll-free numbers. Hearing-impaired persons may contact these offices via TDD by calling (202) 708–9300 or 1–(800) 877–8339.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this notice have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980. No person may be subjected to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**. Public reporting burden for the collection of information requirements contained in this rule are estimated to include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided under the preamble heading, *Other Matters*. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street, SW., room 10276, Washington, DC 20410; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Background

Section 554 of the National Affordable Housing Act (Pub. L. 101–625, approved November 28, 1990) amended title I of the United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*) by adding a new section 23 that creates a Family Self-Sufficiency (FSS) program. The purpose of the program, as enunciated in section 554, "is to promote the development of local strategies to coordinate use of public housing and assistance under the certificate and voucher programs under section 8 with public and private resources, to enable eligible families to achieve economic independence and self-sufficiency." This Notice sets forth guidelines for PHAs/IHAs that operate a FSS program.

Overview

This notice announces HUD's establishment of the FSS program under which each PHA/IHA that administers a rental certificate and rental voucher program or makes new public and Indian housing rental units available for rental may carry out a FSS program. At this time, the FSS program is not applicable to homeownership programs, such as Mutual Help, Turnkey III, etc.

As directed by section 554, the operation of a FSS program is optional with PHAs/IHAs in Fiscal Year (FY) 1991 and FY 1992, except for those PHAs/IHAs receiving incentive award units. As of October 1, 1992, each PHA/IHA, unless exempted by HUD (see section IV(C) of this notice), must operate a FSS program for the number of families as determined by the minimum program size requirements (see section IV(B) of this notice), subject to the availability under appropriation acts of budget authority for the rental voucher, rental certificate, public and Indian

housing programs. Operation of the local FSS program must begin within 12 months of notification of application approval for rental certificates, rental vouchers, or public/Indian housing units. For FSS, this means that activity such as outreach, participant selection, and enrollment must have begun. Full service delivery to the total number of families required to be served need not occur within 12 months.

This notice contains the requirements for implementing and administering a FSS program funded pursuant to the NOFAs to be issued for the Federal Fiscal Year (FFY) 1991 incentive award competition. Even if a PHA/IHA does not receive FFY 1991 incentive award funds, it may establish a FSS program in accordance with this Notice using existing funding sources to gain program experience prior to the mandatory FFY 1993 implementation deadline and to meet the statutory FFY 1992 incentive award criterion for "successful and outstanding implementation" of a local FSS program. HUD encourages the formation of such voluntary FSS programs. PHAs/IHAs may convert ongoing Operation Bootstrap, Project Self-Sufficiency, HUD/HHS Economic Empowerment Demonstration Programs, and other similar local self-sufficiency programs to a FSS program, as described in this Notice, to avoid duplicative programs with different requirements and to gain the FSS program experience necessary to compete for the FFY 1992 incentive award funds.

All PHAs/IHAs receiving funds in FFY '93 and subsequent years for new section 8 rental voucher or rental certificate units and all PHAs/IHAs receiving funds for new public/Indian housing units must (unless exempted from operating a program or authorized to operate a smaller program by HUD) operate a FSS program of a specified minimum size.

The minimum size of the section 8 or public/Indian housing FSS program is as follows: (1) The number of rental vouchers, rental certificates, and public and Indian housing units reserved in FFY 1991 and FFY 1992 pursuant to FSS incentive award competitions, plus, as applicable, (2) a public/Indian housing FSS program for the number of public and Indian housing rental units reserved in FFY 1993 and subsequent years, and a Section 8 FSS program for the number of rental vouchers or rental certificate units reserved in FFY '93 and subsequent years. In determining the size of the PHA's/IHA's FSS program, all additional rental units except those used to replace expiring rental certificates or rental vouchers will be counted. PHAs/IHAs electing to administer a local FSS program or to convert ongoing Operation Bootstrap, Project Self-Sufficiency, and other local self-sufficiency programs to FSS may count against this minimum size requirement, the number of families still enrolled in these programs who agree to convert to the FSS program.

HUD encourages PHAs/IHAs to operate FSS programs larger than the minimum required size where services are available.

The FSS Program

Mandatory Program

Under the FSS program created by this notice, beginning in FFY '93, each PHA/IHA (except those granted an exemption by HUD) that receives funding for additional rental voucher or rental certificate units or that receives funding for additional public and Indian housing rental units must operate a FSS program. To be exempted from the operation of a FSS program of the minimum program size otherwise required, a PHA/IHA must certify to HUD that carrying out a FSS program of that size is infeasible because of inadequate funding or lack of cooperation by other units of government, or other such reasons.

Other Local Programs

HUD recognizes that some PHAs/IHAs have been operating a Project Self-Sufficiency or Operation Bootstrap program or other organized self-sufficiency programs designed to enable families to achieve economic independence. This notice allows families currently enrolled in those programs to be transferred to a FSS program. A family that wishes to transfer to a FSS program must enter into a FSS Contract of Participation to become entitled to the benefits thereunder as well as to be subject to the contract's obligations. Families that elect not to transfer to a FSS program may continue to participate in the program in which they currently are enrolled and will not be counted as participants in the FSS program. PHAs/IHAs should continue to administer the HUD-approved Operation Bootstrap and Project Self-Sufficiency programs until all current participants have either transferred to the FSS program or completed the self-sufficiency program in which they are now enrolled.

Participant Selection

A PHA/IHA may select FSS participants from current recipients of section 8 or public and Indian housing assistance, including current recipients who are also participating in local programs similar to the FSS program, e.g., Operation Bootstrap and Project Self-Sufficiency. The PHA's/IHA's procedures for selecting current recipients must be objective and systematic.

FSS participants may also be selected from the section 8 or public/Indian housing waiting lists. Families who elect to participate in a FSS program and who are not already public/Indian housing tenants or section 8 participants must be selected for participation in the public/Indian housing FSS program or section 8 FSS program as applicable. They must also be selected for admission to the section 8 or public/Indian housing program from the section 8 or public/Indian housing waiting list, as applicable. (The FSS program does not change the current section 8 or public/Indian housing procedures for selecting families for admission to section 8 or public and Indian housing from the waiting list for the respective programs.)

Non-discrimination in Selection

If PHAs/IHAs opt to select participants in the FSS program who are current public/Indian housing residents or section 8 participants, the selection procedures must be described in the FSS Action Plan. Procedures for selection of FSS participants may not result in discriminatory practices or treatment toward either minority or non-minority groups. The Action Plan must indicate what specific actions will be taken to assure that both minority and non-minority groups are informed about the FSS Program and specify how this information will be made known (e.g., through door-to-door flyers, posters in common rooms, advertisements in newspapers of general circulation, as well as any media targeted to minority groups, etc). This Action Plan discussion only applies to current recipients, but similar efforts must be made towards families who would need to be recruited if there are an insufficient number of current residents/recipients or applicants on the waiting lists who are interested in participating in the program.

Contract of Participation

A participating family (defined in section I.(L)) must enter into a "Contract of Participation" (defined in section I.(B)) with the PHA/IHA that spells out the appropriate "supportive services" (defined in section I.(M)) that the participating family will receive during the time that the participating family is receiving assistance under the FSS

program. The Contract of Participation must also spell out the responsibilities of a participating family, including the conditions or causes for termination from the FSS program. A participating family must fulfill its obligations under the Contract of Participation or the PHA/IHA may withhold or terminate FSS supportive services and the participating family will forfeit any escrow account funds. Section 554 provides that in the case of a section 8 participating family, the PHA/IHA may also withhold or terminate housing assistance if the participating family does not fulfill its obligations under the Contract of Participation.

HUD is proposing that if the FSS participant is living in a public/Indian housing unit or a project-based certificate unit reserved for the FSS program, the PHA/IHA (in the case of public/Indian housing) or the owner (in the case of a project-based certificate unit) may require the participating family to move to another assisted unit to make the unit available to another participating family. Such a move may be appropriate if the participating family is no longer in need of on-site FSS supportive services or has failed to fulfill the family obligations under the Contract of Participation. Families not participating in FSS might also be required to move to free up a unit for a participating family. The section 8 and public/Indian housing regulations would have to be amended to allow implementation of such a requirement. Before undertaking such amendments, the Department solicits comments on this proposal.

For good cause, such as serious illness, involuntary loss of employment, etc., a PHA/IHA shall, at the request of a participating family, extend the period for fulfillment of the family obligations under the Contract of Participation for a maximum of two years beyond the original five-year term.

The Contract of Participation will require the head of the participating family (a person designated by the family) to seek and maintain suitable employment, that is, employment that reflects the person's training and available job opportunities, during the term of the contract and any extension thereof. The PHA/IHA also may, during the term of the contract, provide counseling in homeownership and money management to the participating family.

Escrow Savings Account.

Description of Statute

A participating family's earned income may increase during the term of the Contract of Participation. The statute requires the PHA/IHA to establish an "escrow savings account" for each FSS family, and to credit this FSS account a portion of the increase of rent paid that would otherwise result from increases in earned income during the term of the Contract of Participation (United States Housing Act of 1937, section 23(d)).

Section XIII of these guidelines establishes requirements concerning the FSS account. Under the terminology used in these guidelines, "FSS account" means the FSS escrow account. The term "FSS credit" is used to denote the amount credited by the PHA to the participating family's FSS account.

Under the statute, the amount of the FSS credit is based on the amount of "rent paid" by the participating family. This term refers to the family contribution to rent as defined in accordance with existing program procedures.

For an participating family whose income is below 50 percent of the area median (a "very low income family"), the statute provides that the "rent paid" may not be increased because of an increase in earned income during the term of the Contract of Participation. Such a participating family's FSS account is credited a part of the increase in the rent which would otherwise be paid by the participating family because of an increase in earned income during FSS participation. The escrow credit is calculated in accordance with a statutory formula: the difference between 30 percent of the family adjusted income and the amount of the "rent paid" by the participating family. In computing the participating family's rent paid for this purpose, the participating family's income does not include any increase in family earned income since commencement of the Contract of Participation. The participating family's net rent is effectively reduced by the amount of credits to the FSS account, and the account balance is held by the PHA/IHA as savings for the participant family.

For a participating family with an income between 50 and 80 percent of area median ("low income", but not "very low income"), the maximum potential FSS credit is subject to a similar formula. However, the law gives HUD administrative discretion to determine the amount of FSS credit within the statutory maximum. For such a participating family, the statute states that HUD "shall provide for increased rents" for such families, but does not specify the amount of such increase in rent paid (and corresponding reduction in amount of the escrow credit). The Department has chosen to allow such a low income participating family half of the escrow credit of a very low income participating family.

If income of a participating family rises to 80 percent or more of the area median, FSS credits are no longer made by the PHA/IHA on behalf of the participating family.

FSS Escrow Account

In the public/Indian housing and section 8 rental certificate programs the amount of family rent is determined by a formula stated at section 3(a) of the United States Housing Act of 1937. This amount is called the family's "Total Tenant Payment" (defined in part 813 (Certificates), part 905 (Indian Housing), part 913 (Public Housing)). In the section 8 rental voucher program, the statute and program rules do not specify the maximum share of rent payable by the family. However, the basic rental voucher program subsidy formula provides for an assistance payment to cover the difference between 30 percent of a family's adjusted income and the "payment standard"—representing the amount generally needed to rent a unit meeting program standards in the local housing market. A family which leases a unit which rents at the payment standard pays 30 percent of adjusted income as its share of rent.

In these guidelines, the term "Family Contribution" for purpose of the FSS account computation is defined to mean:

—For public/Indian housing and the section 8 rental certificate program: The Total Tenant Payment as determined under HUD regulations (part 813, part 905, part 913).

—For the section 8 rental voucher program: 30 percent of adjusted monthly income.

The guidelines provide that the monthly FSS credit for a very low income participating family is the lesser of two amounts:

(1) 30 percent of current monthly adjusted income, minus the amount of Family Contribution obtained by disregarding any increase in participating family earned income since execution of the Contract of Participation.

(2) The current Family Contribution less the Family Contribution at commencement of the Contract of Participation.

This computation of the FSS credit reflects the dual statutory limitation: First, the maximum amount of the FSS credit is limited to any increase in the Family Contribution ("rent paid") during the period of FSS participation. Second,

the amount of the FSS credit is 30 percent of monthly adjusted participating family income (including the increase in earned income during FSS participation), less the current Family Contribution (computed by excluding from income the amount of any increase in earned income during FSS participation).

In computing the FSS credit under the statutory formula "earned income" as defined in the statute and guidelines mean income from wages, salaries and other employee compensation, as well as any earnings from self employment. However the term earned income does not include any pension or annuity, transfer payments, or any cash or in-kind benefits.

For a low income, but not very low income FSS participant, the statute gives authority for HUD to increase the amount of the participating family' s "rent paid" (Family Contribution), and thus reduce the amount of the FSS credit. For such participating families the statute does not prescribe any minimum FSS credit, but leaves the amount of the FSS credit to determination by HUD. HUD has determined that the amount of the FSS credit for a low income participating family will be half the amount computed in accordance with the same formula applied to very low income participating families.

Finally, FSS participants who are not low income families (income above 80 percent of the area median) do not receive any credit.

Action Plan

The Action Plan (see section VIII) shall describe the supportive services that a PHA/IHA will provide; the size, characteristics (to include racial and ethnic data—HUD requires the submission of racial, ethnic, and gender data pursuant to section 808(e)(6) of the Fair Housing Act and section 562 of the Housing and Community Development Act of 1987), number, and needs of the families expected to participate in the program; and the services and activities to be provided to families by both public and private resources, along with how the services will be delivered to families. The Action Plan must give a description of the public and private resources that may be made available to underwrite the activities and services under the FSS program, and a timetable for implementation of the program. The PHA/IHA also must certify to HUD that the FSS program has been coordinated with other similar Federal, State, or local programs to avoid duplication of services and activities.

In developing its Action Plan, which must be submitted to HUD for approval, the PHA/IHA is directed, under the statute, to consult with the chief executive officer of the jurisdiction served by the PHA/IHA, the program coordinating committee (see section V), representatives of residents of public/Indian housing (but not if the FSS program has no public/Indian housing component, and is operated with rental certificates and rental vouchers only), local agencies responsible for carrying out job training programs, and other public and private service providers.

Use of Public/Indian Housing Facilities

Section 554 also provides that each PHA/IHA carrying out a FSS program may, subject to the approval of HUD, make available and utilize common areas or unoccupied public and Indian housing units in public/Indian housing projects administered by the PHA/IHA for the provision of supportive services under the FSS program. A PHA/IHA may use these areas or units even though it is only providing section 8 subsidies in conjunction with its FSS program. Cost of using the areas must be prorated. For example, if a PHA/IHA has 50 section 8 FSS participants and 50 public/Indian housing FSS participants, the costs will be borne equally by the two programs. (See section XV.) The Department is currently developing changes to the Performance Funding System (PFS) regulation (24 CFR part 990, subpart A, and 24 CFR part 905) to allow consideration in the subsidy calculation for some units converted to non-dwelling use to support self-sufficiency programs. Pending publication of the final rule implementing this change, the Department is granting waivers.

Reports

This notice requires each PHA/IHA that operates a FSS program to submit an annual report to HUD by September of each year detailing its activities, along with a description of the effectiveness of the program and any recommendations for legislative or administrative action to improve the FSS program.

Fees

PHAs/IHAs will be paid a fee to defray the costs incurred in administering assistance under their section 8 FSS program (see section XII of this Notice), including the cost associated with employing service program coordinators to administer their FSS program.

I. Definition of Terms Used in This Notice

As used in this notice, the following terms have the meaning indicated:

(A) "Certification" means a written assertion based on supporting evidence, which shall be kept available for inspection by HUD and the public, which assertion shall be deemed to be accurate for purposes of this notice, unless the Secretary determines otherwise after inspecting the evidence and providing due notice and opportunity for comment.

(B) "Contract of Participation" (see also section VI) means a contract in a form approved by HUD, entered into between a "participating family" and a PHA/IHA carrying out a program to promote family self-sufficiency that sets forth the provisions of the FSS program and specifies the resources and "supportive services" to be made available to, and the responsibilities of, the "participating family."

(C) "Earned income" means income from wages, tips, salaries, other employee compensation, and any earnings from self-employment. (See 24 CFR 813.106(b) (1), (2) and (8), 905.320(b) (1), (2), and (8), and 913.106(b) (1), (2) and (8). The term does not include any pension or annuity, transfer payments, any cash or in-kind benefits, or funds deposited in or accrued interest on the escrow account established by a PHA/IHA on behalf of a "participating family."

(D) "Family contribution" for purpose of the FSS credit and FSS account computation means:

—For public/Indian housing and the section 8 rental certificate program: the Total Tenant Payment as determined under HUD regulations (part 813, part 905, part 913).

—For the section 8 rental voucher program: 30 percent of adjusted monthly income.

(E) "FSS account" means the FSS escrow account.

(F) "FSS credit" means the amount credited by the PHA/IHA to the participating family's FSS account.

(G) "Family Self-Sufficiency" or "FSS" program means a program established by a PHA/IHA within its jurisdiction to promote self-sufficiency among participating families, including the provision of "supportive services" to these families.

(H) "Head of family" means the adult member designated by the participating family, in consultation with the PHA/IHA, to be its head for purposes of the FSS program.

(I) "HUD" or "Department" means the Department of Housing and Urban Development.

(J) "Low-income family" means a family whose income does not exceed 80 percent of the area median income (as determined by HUD with adjustments for family size). See 24 CFR parts 813, 905 and 913.

(K) "NOFA" means a Notice of Funding Availability.

(L) "Participating family" means a family that resides in public/Indian housing or housing assisted under the section 8 rental voucher or rental certificate program and that elects to participate, and has signed the contract of participation, in a FSS program established under this Notice.

(M) "Supportive services" means those appropriate services that a PHA/IHA will make available, or cause to be made available to a participating family under a contract of participation, and may include:

(1) Child care of a type that provides sufficient hours of operation and serves an appropriate range of ages;

(2) Transportation necessary to enable a participating family to receive available services;

(3) Remedial education;

(4) Education for completion of secondary or post secondary schooling;

(5) Job training, preparation, and counseling; job development and placement; and follow-up assistance after job placement and completion of the contract of participation;

(6) Substance/alcohol abuse treatment and counseling;

(7) Training in homemaking and parenting skills;

(8) Training in money management;

(9) Training in household management;

(10) Counseling in the responsibilities of homeownership, and on opportunities available for rental and homeownership in the private housing market, including information on an individual's rights under the Fair Housing Act;

(11) Any other services and resources appropriate to assist participating families to achieve economic independence and self-sufficiency.

(N) "Very low-income family" means a family whose income does not exceed 50 percent of the area median income (as determined by HUD with adjustments for family size). See 24 CFR parts 813, 905 and 913.

II. Purpose

This notice establishes a program to be known as the FSS program. The purpose of the FSS program is to promote the development of local strategies to coordinate use of the public and Indian housing programs and assistance under the rental certificate and rental voucher programs under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f) with public and private resources, to enable families eligible for or receiving assistance under these programs to achieve economic independence and self-sufficiency.

III. Applicability of Program Regulations

A FSS program established under this Notice shall be operated in conformity with all applicable Public Housing, Indian Housing, and section 8 program regulations, and applicable civil rights authorities, including Title VI of the Civil Rights Act of 1964, the Indian Civil Rights Act of 1968, the Fair Housing Act, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, Executive Order 11063, section 3 of the Housing and Urban Development Act of 1968.

IV. Elements of the FSS Program and Minimum Program Size

(A) *General.* Each PHA/IHA may, during FFY '91 and '92, operate a FSS program. Beginning in FFY '93, each PHA/IHA must operate a FSS program of the minimum program size specified under these guidelines as described in paragraph (B) of this section, except as provided in paragraph (C) of this section. A FSS program shall be operated in compliance with an "Action Plan" (defined in section VIII) and shall provide comprehensive "supportive services" (defined in section I.(M)) for eligible families electing to participate in the program.

(B) *Minimum Program Size.* (1) The minimum program size for a PHA's/IHA's public/Indian housing FSS program in FFY '91 and '92 is the number of public/Indian housing units reserved under the FSS incentive award allocations for that PHA/IHA. The minimum program size for the PHA's/IHA's section 8 FSS program in FFY '91 and '92 is the number of rental certificates and rental vouchers reserved under the FFY '91 and '92 FSS incentive award allocations for the section 8 programs. A PHA/IHA may elect to support an even larger FSS program; HUD encourages the operation of such larger programs.

(2) Beginning in FFY '93, a PHA/IHA which has received a public/Indian housing incentive award must increase the minimum size of its public/Indian housing FSS program by adding to it the number of any additional public/Indian housing units reserved. Other PHAs/IHAs must begin operating a public/Indian housing FSS program equal to the total number of any additional public/Indian housing rental units reserved each year. The minimum size of the section 8 FSS program for a PHA/IHA which received section 8 incentive award units must be increased by the number of rental vouchers or rental certificates reserved each year. Other PHAs/IHAs must begin operating a section 8 FSS program equal to the total number of any additional rental vouchers or certificates reserved each year.

(C) *Exception.* HUD will not require a PHA/IHA to establish and carry out a FSS program of the minimum program size if the PHA/IHA provides a certification to HUD (see definition of "certification in section I.(A)), that the establishment and operation of a FSS program of the minimum program size is not feasible because of local circumstances, which may include:

(1) Lack of supportive services funding;

(2) Lack of funding for reasonable administrative costs;

(3) Lack of cooperation by other units of State or local government; or

(4) Any other circumstances that the Secretary may consider appropriate.

For purposes of this section, the establishment and operation of a FSS program would not be considered as "not feasible" and thus grounds for an exemption, where a PHA/IHA claims that it is unable to operate a FSS program of the minimum program size, but in the opinion of HUD, the PHA/IHA can effectively operate a smaller program.

(D) *Administration.* A PHA/IHA may employ appropriate staff, including a service coordinator or program coordinator, to administer its FSS program.

(E) *Review of records.* HUD reserves the right to examine, during its management review, or at any time, the documentation and data that a PHA/IHA relied on in certifying to the infeasibility of its establishing and operating a FSS program.

(F) *Nondiscrimination compliance.* Any IHA established pursuant to State law (see 24 CFR 905.125) or any PHA which has one or more of the three following conditions is not eligible to receive FSS incentive units:

(1) There are pending civil rights suits against the applicant brought by the Department of Justice;

(2) There are outstanding findings of noncompliance with civil rights statutes, Executive Orders or regulations as a result of formal administrative proceedings, or the Secretary has issued a charge against the applicant under the Fair Housing Act, unless the applicant is

operating under a conciliation or compliance agreement designed to correct the areas of noncompliance; or

(3) There has been a deferral of the processing of applications from the applicant imposed by HUD under title VI of the Civil Rights Act of 1964, the Attorney General's Guidelines (28 CFR 50.3), and the HUD title VI regulations (24 CFR 1.8) and procedures (HUD Handbook 8040.1), or under section 504 of the Rehabilitation Act of 1973 and the HUD section 504 regulations (24 CFR 8.57).

V. Program Coordinating Committee

(A) *General.* Each participating PHA/IHA must establish a Program Coordinating Committee whose function will be to assist the PHA/IHA in securing commitments of public and private resources for the operation of the FSS program within the PHA's/IHA's jurisdiction, including assistance in developing the Action Plan and in implementing the program.

(B) *Membership.* The Program Coordinating Committee may consist of representatives of the PHA/IHA, Resident Management Corporation (RMC) or Resident Council (RC) (where applicable), residents of public/Indian housing or section 8 participants, the unit of general local government served by the PHA/IHA, local agencies (if any) responsible for carrying out programs under the Job Training Partnership Act and the Job Opportunities and Basic Skills Training Program under part F of title IV of the Social Security Act, and other organizations, such as other State, local or tribal welfare and employment agencies, public and private education or training institutions, child care providers, nonprofit service providers, private business, and any other public and private service providers affected by the operation of the FSS program.

(C) *Alternative committee.* The PHA/IHA may, in consultation with the chief executive officer of the unit of general local government served by the PHA/IHA, utilize an existing entity as the Program Coordinating Committee if the membership of the existing entity is drawn from the same or similar organizations identified in paragraph (B) of this section.

VI. Contract of Participation

(A) *General.* A "Contract of Participation" is an agreement between a PHA/IHA and a participating family that sets forth the provisions of the FSS program and specifies the resources and appropriate FSS supportive services to be made available to, and the responsibilities and obligations of, a participating family. The contract, which shall be in a form prescribed by HUD, shall provide, among other things, as required by section 23(c) (1), that the PHA/IHA may (1) terminate or withhold FSS supportive services for participating public/Indian housing and section 8 families and (2) terminate or withhold the section 8 assistance if the participating family fails to comply with the requirements of the Contract of Participation.

(B) *Obligations.* The contract shall provide that each participating family will be required to fulfill those obligations to which the participating family has committed itself under the contract of participation no later than 5 years after entering into the contract.

(C) *Extension.* The PHA/IHA shall, in writing, extend the term of the contract for no more than two years for any participating family that, in writing, requests an extension (including a description of the need for an extension), provided the PHA/IHA finds that good cause exists for granting the extension. As used in this paragraph, "good cause" means circumstances beyond the control of the participating family such as a serious illness or involuntary loss of employment. Extension of the contract will entitle the participating family to continue to receive FSS escrow credits in accordance with section XIII.

(D) *Employment.* The person designated in the contract of participation as the head of the participating family shall be required under the contract to seek and maintain suitable employment (as determined by the parties based on the person's skill, education, and the available job opportunities within the jurisdiction served by the PHA/IHA) during the term of the contract and any extension thereof. The contract may specify what corrective action the PHA/IHA may take with respect to a head of a participating family who refuses to seek suitable employment.

(E) *Counseling.* The PHA/IHA may, during the term of the contract, including any extension of the term, provide counseling or cause counseling to be made available for participating families with respect to affordable rental and homeownership opportunities in the private housing market and about housing choice and opportunities for families to select housing from a full range of neighborhoods, and money management counseling.

(F) *Transitional assistance.* A PHA/IHA may continue to offer a former participating family that is employed and that has completed its contract, appropriate FSS supportive services that may assist the family in remaining self-sufficient.

(G) *Modification.* The parties to the Contract of Participation may mutually agree to make changes to the contract, on terms acceptable to the parties, including changes related to the number and identity of participating family members, and the supportive services to be provided to the participating family, provided the changes are consistent with the objectives of the FSS program.

(H) *Termination.* The Contract of Participation may be terminated by:

(1) Mutual consent of the parties;

(2) The failure of a participating family or a member of the participating family to honor the terms of the contract;

(3) A participating family's achieving self-sufficiency;

(4) Expiration of the term of the contract and any extension thereof;

(5) A participating family's withdrawal from the FSS program;

(6) By such other act as is deemed inconsistent with the purpose of the FSS program; or

(7) By operation of law.

VII. Selection of FSS Participants

(A) *General.* (1) Families to be selected to participate in the FSS program must be eligible for the section 8 or public/Indian housing programs, as applicable, and must be selected from one of the following categories:

(a) Current participants in the rental voucher or rental certificate program, or current residents in the public/Indian housing programs.

(b) Applicants on the PHA's/IHA's waiting list for rental vouchers and rental certificates or waiting list for public/Indian housing;

(c) Public/Indian housing residents or rental voucher or rental certificate participants who are currently participating in Operation Bootstrap, Project Self-Sufficiency, or a local self-sufficiency program who agree to sign a FSS Contract of Participation may be selected to participate in the FSS program.

(2)(a) Section 8 participants and applicants must be on the public/Indian housing waiting list to be selected to move into a public/Indian housing unit to participate in the public/Indian housing FSS program and to be counted toward the public/Indian housing FSS minimum program size.

(b) Public/Indian housing residents and applicants must be on the section 8 waiting list and must be selected in accordance with HUD approved section 8 applicant selection procedures to be selected to receive section 8 assistance

to participate in the section 8 FSS program and be counted toward the section 8 FSS minimum program size.

(B) *Optional Program Design.* (1) PHAs/IHAs operating a public/Indian housing FSS program may elect to select FSS participants from the public/Indian housing waiting list and/or from current public/Indian housing residents. The PHA/IHA must indicate in the Action Plan what choice it has made.

(2) PHAs/IHAs operating a section 8 FSS program may elect to select FSS participants from the section 8 waiting list and/or from current section 8 participants. The PHA/IHA must indicate in the Action Plan what choice it has made.

(3) The PHA/IHA Action Plan must describe the basis for restricting selection to any one of these groups or any combination thereof.

(C) *FSS participant selection procedures*—(1) *Section 8 applicants.* If FSS participants are being selected from applicants to the PHA/IHA's section 8 program, the PHA/IHA must use the section 8 waiting list established pursuant to 24 CFR parts 882 and 887. When a section 8 FSS slot becomes available, the slot must be offered to the family at the top of the section 8 waiting list, in accordance with section 8 selection preferences in the HUD approved administrative plan and Equal Opportunity Housing Plan (EOHP). Applicant families who decline to participate in the FSS program shall not lose their place on the section 8 waiting list.

(2) *Section 8 participants.* If FSS participants are selected from among participants in the PHA's rental voucher and rental certificate programs, the PHA's/IHA's procedures for FSS selection must be objective and systematic and specified in the Action Plan. Current section 8 participants who do not wish to participate in the FSS program shall not lose their housing assistance because of this decision.

(3) *Public and Indian housing applicants.* If FSS participants are being selected from applicants to the PHA/IHA's public/Indian housing program, the PHA/IHA must use the public/Indian housing waiting list established pursuant to 24 CFR part 960 or 905, as applicable. If a FSS slot is to go to an applicant family, it must be offered to the family at the top of the public/Indian housing waiting list, in accordance with the HUD-approved public/Indian housing tenant selection and assignment plan. Applicant families who decline to participate in the FSS program shall not lose their place on the public/Indian housing waiting list.

(4) *Public and Indian housing residents.* If FSS participants are being selected from among public/Indian housing residents, the PHAs procedures for FSS selection must be objective and systematic and must be specified in the Action Plan. Current public and Indian housing residents who do not wish to participate in the FSS program shall not lose their housing assistance because of this decision.

(5) *Soliciting current resident/participant interest.* The PHA's/IHA's plans to publicize the availability of the public/Indian housing and section 8 FSS programs and solicit resident/participant expressions of interest should be described in the Action Plan.

(6) *Opening the waiting lists.* A PHA/IHA may open its public/Indian housing or section 8 waiting lists as applicable to additional families interested in participating in the FSS program only when there are no families on its public/Indian housing or section 8 waiting lists, as applicable, willing to participate in the public/Indian housing or section 8 FSS programs respectively. The PHA/IHA will advertise this solicitation of interest in accordance with the procedures established in its Action Plan.

(7) *Federal preferences.* The selection from the PHA/IHA waiting list of any applicant family without a federal preference ahead of a family with a preference shall be counted against the federal preference exception authority of the PHA. (See 24 CFR 882.219, 887.157, 905.305, 960.211)

(8) *Nondiscrimination.* In selecting families for the FSS program, PHAs must show in their Action Plan how their selection of applicants, currently assisted families, or a combination of both will treat potential FSS participants without regard to race, color, religion, sex, handicap, familial status, or national origin.

VIII. Action Plan

(A) *General.* Each PHA/IHA operating a FSS program shall develop an Action Plan to carry out activities under the local FSS program.

(B) *Development of Action Plan.* The Action Plan shall be developed in consultation with the chief executive officer of the applicable unit of general local government and the Program Coordinating Committee (See section V).

(C) *Initial submission and revisions.* A PHA's/IHA's initial Action Plan must be submitted to HUD for approval within 90 days of notification of approval by HUD of the PHA's/IHA's first application for an FSS incentive award of section 8 or public/Indian housing units in FFY '91 and 92. This deadline of 90 days from notification also applies to PHAs/IHAs awarded section 8 or public/Indian housing units in FFY '93 who will be beginning their first FSS program. Thereafter, the PHA/IHA must maintain a current Action Plan. Any changes must be approved by HUD.

(D) *Contents of Plan.* An Action Plan shall contain, at a minimum:

(1) A description of the number, size, characteristics, and other demographics (including racial and ethnic data), and the supportive service needs of the families expected to participate in the FSS program;

(2) A description of the number of eligible participating families who can reasonably be expected to receive supportive services under the FSS program, based on available and anticipated Federal, tribal, State, local, and private resources;

(3) A description of the activities and supportive services to be provided by both public and private resources to participating families;

(4) A description of how the FSS program will identify needs and deliver services and activities according to the needs of the participating families;

(5) A description of both the public and private resources that are expected to be made available, to provide the activities and services under the FSS program;

(6) A timetable for implementation of the FSS program (See section IX(C));

(7) A certification that development of the services and activities under the FSS program has been coordinated with the Job Opportunities and Basic Skills Training Program under part F of title IV of the Social Security Act, the program under the Job Training Partnership Act, and any other relevant employment, child care, transportation, training, and education programs (e.g., Job Training for the Homeless Demonstration program) in the applicable area, and that implementation will continue to be coordinated, in order to avoid duplication of services and activities.

(8) A designation of the number of units for the FSS program by bedroom size and program type (*i.e.*, public/Indian housing, rental certificates, and/or rental vouchers).

(9) For FSS participants to be assisted by the use of the section 8 rental certificate and rental voucher programs, a statement indicating the PHA's/IHA's intent to select FSS participants from the section 8 waiting list or from current section 8 rental certificate and rental voucher participants and the number of such families. (See also section VII(C)(6).)

(10) For FSS participants to be assisted under the public or Indian housing programs, a statement indicating the PHA's/IHA's intent to select FSS participants from the waiting list or from current public/Indian housing families and the number of such families. (See also section VII(C)(6).)

(11) A description of the PHA's/IHA's notification and outreach efforts, including efforts to notify section 8 participants, public/Indian housing residents, and public/Indian housing applicants, of FSS program availability and requirements, and a description of the PHA's/IHA's efforts to recruit FSS participants if an insufficient number of current section 8 participants, public/Indian housing residents or public/Indian housing applicants for those programs is interested in participating. The PHA/IHA shall specify what actions it will take to assure that both minority and non-minority groups are informed about the FSS program, and how the PHA/IHA will make this information known (e.g., through door-to-door flyers, posters in common rooms, advertisements in newspapers of general circulation, as well as any media targeted to minority groups.) These descriptions are not required if the PHA/IHA will only be selecting FSS participants from the section 8 waiting list since outreach methods are described in the EOHP.

(12) If the PHA/IHA opts to select some or all FSS participants from among current public/Indian housing residents or section 8 participants, a description of the PHA's/IHA's system for establishing the list of interested participants/residents and selection preferences. The systems must be objective and provide all participants/residents with a reasonable opportunity to place their names on the list of interested participants/residents. Among possible options the PHA/IHA may use to place and organize the names of interested current participants/residents on the list are:

(i) A lottery;

(ii) Seniority based on the length of time the current family has been participating in the PHA's/IHA's applicable program;

(iii) Seniority based on the time the family was on the waiting list and the time it has been participating in the applicable program;

(iv) The date the family expressed interest in participating in the FSS program; or

(v) Some other impartial method.

The PHA/IHA may not establish a system with criteria such as the family's motivation to work.

(13) A description of the PHA's/IHA's policies for terminating or withholding section 8 assistance and supportive services (section 8 participants and public/Indian housing tenants) for families failing to comply with the requirements under their Contract of Participation. The PHA/IHA also should describe the section 8 participant hearing procedures and public/Indian housing grievance procedures for families so affected.

(14) Such other information that would help HUD determine the soundness of a PHA's/IHA's proposed program.

(15) If applicable, the number of families, by program type, who are participating in Operation Bootstrap, Project Self-Sufficiency, or any another local self-sufficiency program who are expected to agree to execute a FSS Contract of Participation.

(E) *Eligibility of a combined program.* PHAs/IHAs that, individually, do not have the capacity to operate a FSS program and PHAs/IHAs that wish to operate a joint program may combine their resources to deliver supportive services under a joint Action Plan that will carry out a combined FSS program that meets the requirements of this Notice.

(F) *Single action plan.* PHAs/IHAs implementing a FSS program with both section 8 and public/Indian housing participants may submit one Action Plan.

IX. Use of Available Housing Assistance

(A) *Use of public/Indian housing units.* PHAs/IHAs receiving FFY '91 and '92 incentive awards should develop policies for the use of public/Indian housing units for the FSS program before the availability of the permanent dwelling units. Because a FSS program must be implemented within 12 months of notice of the incentive award of public/Indian housing units, families will begin to participate in the FSS program before the units received under the FSS incentive allocation are available for occupancy.

(B) *Use of Section 8 assistance.* A PHA/IHA may hold rental certificates and rental vouchers received pursuant to the FY '91 and '92 incentive awards and FY '93 and subsequent fiscal year units for use by families selected to participate in the FSS program. However, PHAs/IHAs may also reach the required minimum FSS program size by using turnover rental certificates or rental vouchers for the FSS program or by selecting current Section 8 participants to participate in the FSS program.

(C) *Implementation Deadline.* Operation of the local FSS program must begin within 12 months of HUD notification of approval of the incentive award application for rental certificates, rental vouchers, or public/Indian housing rental units for the FSS program. This means that activity such as outreach, participant selection, and enrollment must have begun. Full service delivery to the total number of families required to be served need not occur within 12 months.

X. Section 8 Residency Requirement

(A) *Initial occupancy.* In order to participate in a section 8 FSS program, a family receiving assistance under the section 8 rental voucher or rental certificate program must initially reside in the jurisdiction of the PHA/IHA administering that local section 8 FSS program.

(B) If the participating family chooses to continue to participate in the section 8 program but move to another jurisdiction after signing its FSS Contract of Participation, the participating family may continue in the FSS program of the issuing PHA/IHA if it demonstrates to the satisfaction of the issuing PHA/IHA that, notwithstanding the move, the participating family will be able to fulfill its responsibilities under the initial or modified Contract of Participation at its new place of residence. (For example, the participating family may show that similar supportive services to those offered by the issuing PHA/IHA exist at the participating family's new residence, thus allowing the participating family to achieve the objectives or goals agreed to by the participating family and the PHA/IHA and recited in the Contract of Participation.)

(C) *FSS termination and loss of FSS escrow.* In the case of a participating family that has opted to move, as provided under this section, but that is unable to fulfill its obligations under its Contract of Participation, or any modifications thereto, the PHA/IHA may terminate the participating family from the FSS program and the participating family's FSS escrow account will be forfeited.

XI. PHA/IHA Incentive Award Allocation

HUD will carry out a competition for budget authority among PHAs/IHAs for an incentive award of rental certificate and rental voucher assistance and Public/Indian housing development assistance during FFY '91 and FFY '92, and shall allocate such budget or grant authority to PHAs/IHAs, in accordance with the results of the competition. Data on the competition will be published in

the Federal Register in NOFAs that set forth the minimum requirements that a PHA/IHA must meet in order for its application for funding to be processed. The NOFAs also will specify the criteria for reviewing, rating, and approving applications under the incentive award.

XII. Allowable PHA/IHA Fees and Costs

To the extent that funds are available, HUD will pay each PHA/IHA a fee for the costs incurred in administering rental certificate and rental voucher assistance under the FSS program. For FY 1991, funding for PHA administration of FY '91 rental certificates and rental vouchers awarded in connection with the FSS incentive award allocation is as follows: (1) An on-going administrative fee of 8.2 percent of the two-bedroom existing housing fair market rent (FMR) published for effect; (2) maximum preliminary fee of $275.00 per unit (a fee of up to $300.00 will be provided in the future, if provided for in appropriation Acts); and (3) a $45.00 fee for each hard-to-house family (3 or more minors) that is actually housed in a different unit from its pre-program unit. HUD will use the 8.2 percent fee amount appropriated for the incremental rental certificates and rental vouchers being made available in FFY '91 for the FSS program to determine the blended rate for the on-going administrative fee for the PHA's/IHA's entire rental certificate or rental voucher program.

XIII. Family Self-Sufficiency Escrow Accounts

(A) *Establishment of account.* The PHA/IHA shall establish a FSS Escrow Account ("FSS Account") for each family participating in the FSS program. During the term of the Contract of Participation, the PHA/IHA will credit to the FSS Account the amount of the FSS credit determined in accordance with paragraph (B).

(B) *Amount of FSS credit.* (1) In computing the FSS credit under this section, the term "Family Contribution" means:

(a) For public/Indian housing and the Section 8 Rental Certificate Program: Total Tenant Payment (as defined in accordance with parts 813, 905 or 913).

(b) For the section 8 Rental Voucher Program: 30 percent of adjusted monthly income.

(2) For FSS participants who are Very Low Income Families, the FSS credit shall be the lesser of:

(1) Thirty percent of current monthly adjusted income less the Family Contribution obtained by disregarding any increase in earned income since the execution of the Contract of Participation, or

(2) The current Family Contribution less the Family Contribution at the time of the Execution of the Contract of Participation.

The term earned income means income from wages, tips, salaries and any earnings from self-employment. See 24 CFR 813.106(b) (1), (2) and (8), 905.320(b) (1), (2), and (8) and 913.106(b) (1), (2) and (8).

(3) For FSS participants who are Low-Income families but not Very Low Income families, the FSS credit shall be one half of the amount determined pursuant to paragraph (B)(2).

(4) FSS participants who are not Low-Income families shall not be entitled to any FSS credit.

(C) *Investment of Funds in FSS Accounts.* Funds held by the PHA/IHA in the FSS Accounts of families participating in the FSS program shall be held in escrow by the PHA/IHA and invested in HUD-approved investments. Investment income shall be credited, periodically, but no less than annually, to each participating family's FSS Account.

(D) *Disposition of FSS Accounts*—(1) *Withdrawal.* The amount in a participating family's FSS Account in excess of any amount owed the PHA/IHA may be paid to the head of family. The amount shall not be paid until:

(a) The PHA/IHA determines the participating family has met its obligations under the Contract of Participation, and

(b) The head of family certifies that, to the best of his or her knowledge and belief, members of the participating family no longer receive any Federal, State, local or other public assistance for housing.

(2) *Succession.* If the head of participating family ceases to reside with other participating family members in the assisted unit, the remaining members of the family, after consultation with the PHA/IHA, shall have the right to designate another family member to receive the funds in accordance with paragraph (D)(1).

(5) *Forfeiture.* (a) Amounts in the FSS Account shall be forfeited:

(1) If a participating family has failed to meet its obligation under the Contract of Participation, including failure to meet its FSS responsibilities because the participating family moved outside the PHA's/IHA's jurisdiction, or

(2) The participating family is no longer under a Contract of Participation, and is still receiving any Federal, State, local or other public assistance for housing ten years from the commencement of the Contract of Participation.

(b) FSS Account funds forfeited by a public/Indian housing or section 8 participant will be treated as program receipts for such program, and shall be used in accordance with HUD requirements governing the use of program receipts.

(E) *Waiting period.* The PHA/IHA may require a participating family who withdraws funds in its FSS Account to wait for a period of no more than two years, beginning from the date of withdrawal, to apply for assisted housing owned or administered by the PHA/IHA, unless the former participating family reimburses the PHA/IHA in the amount of funds withdrawn.

XIV. Effect of Increases in Family Income

Any increase in the earned income of a participating family during its participation in a FSS program may not be considered as income or a resource for purposes of eligibility of the participating family for other benefits, or amount of benefits payable to the participating family, under any other program administered by HUD, unless the income of the participating family equals or exceeds 80 percent of the median income of the area (as determined by HUD, with adjustments for smaller and larger families).

XV. On-Site Facilities

Each PHA/IHA may, subject to the approval of HUD, make available and utilize common areas or unoccupied public/Indian housing units in public/Indian housing projects to provide supportive services under a FSS program, including a program that administers only a section 8 FSS program.

XVI. Reports

Beginning in 1992, each PHA/IHA that carries out a FSS program, as described in this Notice, shall submit by September of each year, in the form prescribed by HUD, a report regarding its FSS program to the Assistant Secretary for Housing-Federal Housing Commissioner and the Assistant Secretary for Public and Indian Housing. The report shall include, among other things:

(A) A description of the activities carried out under the program;

(B) A description of the effectiveness of the program in assisting families to achieve economic independence and self-sufficiency;

(C) A description of the effectiveness of the program in coordinating resources of communities to assist families to achieve economic independence and self-sufficiency; and

(D) Any recommendations of the public/Indian housing agency or the appropriate local program coordinating committee for legislative or administrative action that would improve the self-sufficiency program and ensure the effectiveness of the program; and

(E) A breakdown of the racial and ethnic data with respect to families who:

(1) Declined to participate in the FSS program;

(2) Elected to participate in the FSS program, but did not execute an FSS contract;

(3) Executed an FSS contract, signed a lease, and voluntarily left the FSS program;

(4) Executed an FSS contract, signed a lease, and were asked to leave the FSS program;

(5) Executed an FSS contract, signed a lease, and completed the FSS program; and

(6) Executed an FSS contract, signed a lease, and remain in the FSS program.

Data should be broken down to show where persons offered an opportunity to participate in the FSS program were found, *i.e.*, were they current residents of public/Indian housing, on the public/Indian housing waiting list, section 8 rental certificate or voucher participants, or on the section 8 waiting list.

(F) HUD intends to perform a long term evaluation of the FSS program. To help assure the quality of that evaluation, each PHA shall submit a certification with the application agreeing to cooperate with and provide requested data to the entity responsible for the program evaluation, if requested to do so by HUD.

Other Matters

Paperwork Burden

The collection of information requirements contained in this notice have been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980. Sections VI, VIII, XIII, and XVI of this notice have been determined to contain collection of information requirements. Information on these requirements is provided as follows:

Information collection	Number of respondents	Responses/respondent	Total annual responses	Hours/response	Total hours
Application	560	1	560	4	2,240
Contract	280	50	14,000	1	14,000
Action plan	280	1	280	40	11,200
Escrow account	280	5	1,400	1	1,400
Annual reports	280	1	280	40	11,200
Total annual burden					40,040

Impact on the Economy

These guidelines do not constitute a major rule as that term is defined in section 1(b) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. An analysis of the guidelines indicates that they would not have (1) an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of the United States-based enterprises in domestic or export markets.

Impact on Small Entities

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that the guidelines would not have a significant impact on a substantial number of small entities. These guidelines would govern the procedures under which public housing agencies and Indian housing authorities would use public and Indian housing development assistance, together with public and private resources, in a program designed to provide supportive services to enable participating families to achieve economic independence and self-sufficiency.

Environmental Impact

With respect to public housing development assistance, a Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implements section 102(2)(c) of the National Environmental Policy Act of the National Environmental Policy Act of 1969 (NEPA). The Finding is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, room 10276, 451 Seventh Street, SW., Washington, DC 20410. With respect to section 8 assistance under the rental certificate and rental voucher programs, the Department has determined that an environmental finding under the NEPA is unnecessary since the rental certificate program and the rental voucher program are part of the section 8 Existing Housing Program, which is categorically excluded under HUD regulations at 24 CFR 50.20(d).

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this notice does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. The notice would have a positive impact on families to the extent that it would provide opportunities for families to become self-sufficient and gain economic independence.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this Notice would not have substantial, direct effects on States, on their political subdivisions, or on their relationship with the Federal government, or on the distribution of

power and responsibilities among the various levels of government. The Notice's major effects would be on individuals.

Dated: September 5, 1991.

Joseph G. Schiff,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 91-23314 Filed 9-27-91; 8:45 am]

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federal register

Monday
September 30, 1991

Part VII

Department of Housing and Urban Development

Office of the Assistant Secretary

Notice of Fund Availability for the Public and Indian Housing Family Self-Sufficiency Program for Fiscal Year 1991

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N-91-3286; FR-3063-N-01]

NOFA for the Public and Indian Housing Family Self-Sufficiency Program for Fiscal Year 1991

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of Fund Availability (NOFA) for FY 1991; Invitation for Incentive Award Applications in connection with Family Self-Sufficiency programs for FY 91 public and Indian housing development funds.

SUMMARY: This Notice announces the availability of public and Indian housing development funds for Fiscal Year (FY) 1991 to support Family Self-Sufficiency (FSS) programs of public housing agencies and Indian housing authorities. The purpose of the FSS program is to promote the development of local strategies that coordinate the use of public and Indian housing and/or section 8 rental certificates/rental vouchers with both public and private resources to enable eligible families to achieve economic independence and self-sufficiency.

In the body of this document is information concerning: The purpose of this NOFA; eligibility; available amounts; the procedures that a public housing agency or Indian housing authority (PHA/IHA) must follow to obtain an Incentive Award of public or Indian housing development units in connection with HUD approval of a PHA or IHA FSS program; the procedures for rating, ranking, and funding PHA/IHA Incentive Award applications. (A similar NOFA for section 8 rental certificates and rental vouchers, as well as a Notice of FSS Program Guidelines, appear elsewhere in today's **Federal Register.**

DATES: Public and Indian housing Incentive Award applications for the Family Self-Sufficiency Program must be received in the HUD Field/Indian Office by close of business on January 10, 1992. Application packets will be available in Field/Indian Offices within 5 days of publication of this NOFA. Appendix A is a list of all Field/Indian Offices with addresses and telephone numbers.

FOR FURTHER INFORMATION CONTACT:

Public Housing: Janice Rattley, Director, Office of Construction, Rehabilitation and Maintenance, Office of Public and Indian Housing. Telephone number (202) 708–1800.

Indian Housing: Dominic Nessi, Director, Office of Indian Housing, Office of Public and Indian Housing. Telephone (202) 708–1015.

Hearing or speech impaired individuals may call HUD's TDD number (202) 708–4594. (The TDD number and the above-listed telephone numbers are not toll-free.)

The address for the persons listed above is: Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this NOFA have been submitted to the Office of Managment and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3404(h)). No person may be subjected to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number. The OMB control number, when assigned, will be announced by spearate notice in the **Federal Register.** Public reporting burden for this collection of information is estimated to include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Information on the estimated public reporting burden is provided under the heading, Other Matters, in the Notice of Program Guidelines for the Family Self-Sufficiency Program, published elsewhere in today's **Federal Register.** Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street SW, room 10276, Washington, DC 20410; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: HUD Desk Officer, room 3001, Washington, DC 20503.

I. Purpose and Substantive Description

A. Authority

1. *Statutory Authority.* Section 23, United States Housing Act of 1937, as added by sec. 554, Cranston-Gonzalez National Affordable Housing Act (Pub. L. 101–625, approved November 28, 1990); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. *Public housing regulations.* Public housing development regulations are published at 24 CFR part 941; program requirements for FY 1991 were published as Notice PIH 91–8 (HUD), dated March 29, 1991.

3. *Indian housing regulations.* Indian Housing development regulations are published as an interim rule (55 FR 24722) at 24 CFR part 905; program requirements for FY 1991 were published as Notice PIH 91–15 (IHA) on May 10, 1991.

4. *FSS Program Guidelines.* FSS program guidelines are published elsewhere in today's edition of the **Federal Register.**

B. Background and Components of Program

Section 554 of the Cranston-Gonzalez National Affordable Housing Act (Pub. L. 101–625, approved November 28, 1990) (NAHA) added Section 23 to the United States Housing Act of 1937, which established the Family Self-Sufficiency (FSS) program. The purpose of the FSS program is to promote the development of local strategies that coordinate the use of public and Indian housing and/or section 8 rental certificates/rental vouchers with both public and private resources to enable eligible families to achieve economic independence and self-sufficiency.

The FSS program requires the formation of a Program Coordinating Committee (PCC), through which the PHA/IHA will obtain commitments of public and private resources to provide supportive services to participating families. The PHA/IHA must prepare an Action Plan for HUD approval, enter into Contracts of Participation with participating families, and establish escrow savings accounts for the benefit of participants when they complete the program and achieve self-sufficiency. Each component of the program is described in detail in the companion Notice of FSS Program Guidelines, published elsewhere in today's **Federal Register.**

To promote the concept of Family Self-Sufficiency, the Department is providing public and Indian housing development grants (which must be applied for) as an incentive (Incentive Awards) to PHAs/IHAs. The following section discusses this funding and the criteria for selection.

C. Incentive Award Funding

To carry out the Incentive Award competition, not less than 10 percent of the public and Indian housing

development assistance available for the purpose under section 5(a)(2) of the United States Housing Act of 1937 (excluding amounts for major reconstruction of obsolete projects (MROP)) shall be made available under this NOFA.

1. *Public Housing Development Appropriation.* For FY 1991, $733.76 million of budget authority (grants) was appropriated for public housing development, including MROP. In FY 1990, MROP accounted for approximately 9 percent of the total allocation. It has been determined that application of not less than the same ratio for the FY 1991 set-aside of grant contract authority for the FSS program is appropriate; thus at least $66.8 million will be available for the public housing Incentive Awards.

a. Notwithstanding its exemption from the fair-share and metropolitan/non-metropolitan requirements of section 213(d) of the Housing and Community Development Act of 1974, FSS public housing development Incentive Award grant funds will be distributed to Regional Offices on the basis of fair share factors which reflect the most recent decennial census data as to population, poverty, housing overcrowding, housing vacancies, amount of substandard housing, and other measurable conditions. The approximate share to be provided to each Region is shown below:

Region	Fair-share factor (percent)
I—Boston	7.6
II—New York	18.2
III Philadelphia	9.2
IV—Atlanta	13.8
V—Chicago	15.1
VI—Ft. Worth	7.9
VII—Kansas City	3.6
VIII—Denver	2.5
IX—San Francisco	18.6
X—Seattle	3.6
Total	100.0

b. Regional Administrators will select applications for funding on the basis of the criteria stated in this NOFA. Partial funding of applications (e.g., approving fewer units than applied for) is authorized to facilitate the funding of additional highly ranked applications.

c. Any unused Regional funding will be redistributed by Headquarters, proportional to need, among remaining Regions with approvable unfunded applications.

2. *Indian Housing Development Appropriation.* For FY 1991, $233,361,000 in budget authority (grants) has been appropriated for Indian housing development. Ten (10) percent (or at least $23.3 million) will be available for IHAs to compete for FSS Incentive Awards.

a. Indian housing development funds for the FSS program will be allocated to the six Indian Field Offices on the basis of fair-share factors which reflect the most recent Bureau of Indian Affairs (BIA) Housing needs survey; and, where available, State or Tribal studies. The approximate share (of the $23.3 million) to be provided to each Indian Field office is shown below:

Indian region	Fair-share factor (percent)
Chicago	13
Oklahoma City	11
Denver	15
Phoenix	35
Anchorage	19
Seattle	7
Total	100

b. Office of Indian Program (OIP) Directors will select applications for funding for Indian housing on the basis of the criteria stated in this NOFA. Partial funding of applications (e.g., approving fewer units than applied for) is authorized to facilitate the funding of additional highly ranked applications. Any unused OIP funding will be redistributed by Headquarters, proportional to need, among remaining OIP offices with approvable unfunded FSS applications. Unfunded OIP FSS funding will be redistributed by Headquarters on the same fair-share basis to the Indian Field Offices after all approvable FSS applications have received funding consideration.

3. *Selection limited to NOFA criteria.* Regional Offices may not authorize any selection criteria in addition to the criteria set out in this NOFA.

D. Eligibility for Incentive Award Units.

1. *PHA/IHA Eligibility.* All PHAs/IHAs are eligible to apply for Incentive Award units, except that:

a. Applicants for public housing development units must have the legal capability to develop, own, and operate public housing projects and have the required local cooperation. (See 24 CFR Part 941 and Notice PIH 91–8 (HUD), March 29, 1991.)

b. Applicants for Indian housing development units must be organized in accordance with 24 CFR 905.125 or 905.126; have executed the required Tribal and/or local cooperation agreements as required by the U.S. Housing Act of 1937, as amended; and maintain administrative capability in accordance with 24 CFR 905.135. A minimum score of 70 on the most recent Administrative Capability Assessment (ACA) is required as a threshold for all IHA FSS applications.

2. *Eligibility for Multiple FSS Incentive Programs. Applications may be made to more than one FSS incentive program; e.g., a PHA may apply for Incentive Section 8 rental certificates or rental vouchers and* Incentive public or Indian housing units, as long as the PHA is eligible to participate in the programs for which it applies.

a. Applications for the FSS Incentive Awards do not preclude applications for funds under other NOFAs for Section 8 rental certificates, rental vouchers, public housing or Indian housing.

b. No public or Indian housing Incentive Award application shall be for more than 50 units, and no PHA/IHA may file applications for more than one Incentive Award from public or Indian housing.

3. *Ineligible Programs.* Homeownership and Indian Mutual Help Housing is not eligible for funding under this NOFA.

E. Incentive Award Selection Criteria/Ranking Factors

1. *Selection Criteria.* In order to be selected for an incentive award, a PHA/IHA must meet the threshold requirements of Notice PIH 91–8, as modified by apendices B and C (public housing) or Notice PIH 91–15 (Indian housing), have a minimum score of 70 on their most recent ACA, and provide evidence that is satisfactory to HUD that it has:

a. A broad base of support for an FSS program in its community;

b. A broad range of services that can be integrated to address the needs of FSS participants;

c. The support of its resident population;

d. The active support of the Chief Executive Officer (CEO) of the unit of general local Government; and

e. Administrative capability to initiate and operate an FSS program, including a willingness to commit or obtain staff resources to support the program.

Additional points will be provided if the PHA/IHA is approved under the HUD/HHS Economic Empowerment Demonstration (EED) program (see section I.E.2.f. of this NOFA) funded from the Community Development Block Grant (CDBG) Technical Assistance Program, (Program announcement No. 91–1, 56 FR 22586, dated May 15, 1991).

2. *Rating Factors.* a. *Supportive Community Relationships:* The FSS program must have broad based

community support, including ties to both minority and non-minority communities, and utilize local public and private organizations that are willing to commit funds, staff, equipment, the use of their buildings and equipment, training assistance, employment opportunities, or other support. Such organizations include local governments, businesses, religious organizations, private non-profit service providers, educational and training institutions, civic organizations, foundations, corporations, and local benefit providers. A successful FSS program must have a broad range of commitments from public and private employers, trainers, counselors and service providers. Ideally, representatives of community groups, organizations and businesses also will serve on the Program Coordinating Committee.

25–16 Points: The PHA/IHA has: (i) a strong, coordinated, varied base of community support as evidenced by described existing working relationships with a variety of public/private resources in the community, including previous commitments of funds, staff, equipment, the use of buildings and equipment, training assistance or employment opportunities; and

(ii) will further expand its existing base of support, as evidenced by written commitments from additional entities to offer support and to coordinate support as participants in the proposed FSS program.

15–0 Points: The PHA/IHA meets only one of the two criteria set forth in paragraphs (i) and (ii) above.

b. *Supportive Services:* A successful FSS program must offer a wide variety of services to address the needs of FSS participants that can be integrated into meaningful assistance for families. A key consideration relates to the fact that the services must be coordinated in their delivery and appropriate in scope to the needs of the residents. For example, quality child-care, capable of attending to a variety of age groups and operating a sufficient number of hours per week to accommodate work, training, and/or counselling schedules may be important. Another important service may be transportation, which links the other services together. The PHA/IHA shall describe past services provided by others to its residents, assess the range and depth of the services, and state how they might be transferred to an FSS program. The PHA/IHA shall include written commitments of support from organizations and entities willing to provide services under FSS.

25–16 Points: The PHA/IHA has: (i) actively worked with public and private service providers to offer supportive services which are comprehensive in scope and quality and include combinations of child care, transportation, job training and placement, counseling, education, money management, parenting, and/or rehabilitation services to residents; *and*

(ii) will further expand the kinds of services and/or number of persons to be served as evidenced by written commitments from identified entities who are providers of such services.

15–0 Points: The PHA/IHA meets only one of the two criteria set forth in (i) and (ii) above.

c. *Resident Support.* The PHA/IHA shall describe its efforts to establish and/or support Resident Councils (RCs), Resident Management Corporations (RMCs), Homeownership programs and resident-based economic development activities. The PHA/IHA shall also describe how its residents are involved generally in PHA planning and operations and specifically resident involvement for support service programming and delivery. A Resolution of Support by resident groups for the FSS programs shall be included, along with any plans the PHA/IHA has developed for including resident participation in the development and operation of FSS programs. This may include resident membership on the PCC and participation in the preparation of the Action Plan.

25–16 Points: The PHA/IHA has a history of resident involvement that includes successful resident participation in PHA/IHA planning and operations, generally, and specifically incorporates resident involvement for support service programming and delivery. This is evidenced by described active involvement in Homeownership programs, economic development activities, etc., and there is written evidence of resident support for the application. Residents are, or will be, as described, represented on the Program Coordinating Committee and participate in the preparation of the Action Plan.

15–0 Points: The PHA/IHA has established resident initiatives and resident involvement does occur; there is movement toward greater participation. Residents will, as described, be represented on the PCC and participate in preparation of the Action Plan.

d. *Chief Executive Officer Support:* The CEO of the unit of general local government must evidence active support for the FSS program. CEO consultation is required in the development of the PCC and the preparation and implementation of the Action Plan. In evaluating this factor, HUD will look at past PHA/IHA undertakings that have involved the CEO and commitments provided by the CEO pledging local governmental funds, staff, equipment, use of buildings and property, etc. for proposed FSS activities and services.

25–16 Points: The CEO of the unit of general local Government and the PHA have successfully cooperated in the past in the provision of service-related activities for PHA/IHA residents. The CEO has expressed strong, written support for the FSS application and has, by written commitment, pledged cooperation for expansion of such support through local governmental funds, staff, equipment, use of buildings and property, etc. for FSS activities and services.

15–0 Points: The CEO and the PHA/IHA have cooperated in the past, and the CEO has provided general support for the PHA/IHA or has committed to provide support in the future for an FSS program through funding, use of facilities, staff, etc.

e. *FSS Administrative Capability.* (1) A PHA applying for Incentive Units must meet the threshold administrative capability test in Appendix C of this NOFA. In addition, the PHA shall:

(a) Be evaluated against the criteria outlined in the HUD Handbook titled *Field Office Monitoring of Public Housing Agencies (PHAs),* No. 7460.7 Rev.–1, chapter 2, paragraph 2–1C;

(b) Demonstrate that it has committed or obtained appropriate staff resources, including but not limited to a capable service coordinator to develop and implement an FSS Program. The Field Office shall evaluate the PHA's performance in accordance with the above and, based upon that evaluation, score the PHA on a scale of 0–25 points.

(2) *Indian Housing:* An IHA's administrative capability to initiate and operate an FSS program will be determined in accordance with 24 CFR part 905.135(c), published as an interim rule at 55 FR 24722 on June 18, 1990.

f. *Coordination with HUD/HHS Economic Empowerment Demonstration Program:* If the PHA/IHA was funded under the HUD–HHS Economic Empowerment Demonstration Program, it should so indicate in the FSS application. (See section I.E.1. of this NOFA.)

Total Possible Points:	10 points PHAs: 135 IHAs: 110

II. Application Process

A. Incentive Award Application Process

PHAs/IHAs applying for Incentive Award units must submit the following to the appropriate Field/Indian Office by close of business on January 10, 1992.

1. *Application Forms.* An application Form HUD–52470 (Public Housing) or HUD–52730 (Indian Housing) for the number of Incentive Award units applied for.

(a) *Public Housing Applications.* Applications for public housing must include the documents listed in

Appendix B and meet the threshold requirements of Appendix C.

(b) *Indian Housing Applications.* Applications for Indian housing must meet the requirements of Appendix D.

(c) *Application Packet.* An Application Packet, consisting of copies of the forms required in (a) and (b) above, will be available in Field/Indian Offices no later than 5 days from the date of publication of this NOFA.

2. *Required Exhibits.* All applicants must submit a narrative demonstration that the PHA/IHA will be able to implement an FSS program within 12 months of application approval.

3. *Additional Submissions.* All applicants must address the following rating factors:

(a) A description of PHA/IHA relationships with the local community (see rating factor at section I.E.2.a. of this NOFA), with any written commitments from additional entities.

(b) A description of past and proposed supportive services (see rating factor at section I.E.2.b. of this NOFA) with any written commitments from organizations and entities willing to provide services under FSS.

(c) A description of PHA/IHA efforts to establish and/or support RCs, RMCs, Homeownership programs and resident based economic development activities (see rating factor at section I.E.2.c. of this NOFA), with resolutions from residents supporting FSS activities, evidence that resident participation will occur in the PCC and preparation of the Action Plan, and evidence from residents of existing resident involvement in PHA operations.

(d) A description of past PHA/IHA relationships with the chief executive officer (CEO) of the unit of general local Government (see rating factor at section I.E.2.d. of this NOFA), including any commitments or pledges.

(e) If the PHA/IHA submitted an application to the Family Support Administration, Department of Health and Human Services for the HUD–HHS Economic Empowerment Demonstration (EED) program it should so state in this application. If the HUD–HHS EED is funded, the FSS application will automatically receive 10 rating points. (See rating factor at section I.E.2.f. of this NOFA.)

B. Incentive Award Application Screening

Immediately after the deadline for receipt of Incentive Award applications, the Field/Indian Office will screen applications to determine whether all information or exhibits were submitted. Appendices B, C and D of this NOFA provide submission requirements and initial threshold screening checklists.

C. Corrections to Deficient Applications

If an application lacks technical information or exhibits, or contains a technical mistake, the PHA/IHA will be advised in writing, and will have 14 calendar days from the date of issuance of such notification to deliver the missing or corrected information or documentation to the Field/Indian Office.

1. The process for curing threshold technical deficiencies for Public Housing applications shall be the same as used in the Notice of Funding Availability, published on March 29, 1991 (56 FR 13246), and clarified by the Notice published on June 28, 1991 (56 FR 29694); for Indian Housing Authorities, the process in the Notice of Funding Availability published April 1, 1991 (56 FR 13378) shall be used.

2. An application that does not meet the applicable threshold requirements and all other requirements of this NOFA after the 14 day technical deficiency correction period will be rejected from processing and determined to be unapprovable.

D. Application Rating, Ranking and Selection

1. Rating of PHA Applications. PHA approvable public housing applications shall be rated by the Field Office and forwarded to the Regional Office.

a. The Regional Office will put applications in rank order (highest ranked first) and make funding selections.

b. Unless otherwise specified by the PHA, partial funding of applications may occur.

2. *Rating of IHA Applications.* IHA approvable applications for Indian Housing shall be rated, ranked and funded by the Indian Offices.

3. *Processing of Incentive Award Projects.* After funding, Incentive Award projects shall be processed in accordance with outstanding program procedures and shall be subject to all time frames set forth in program procedures.

4. *Submission of Action Plan.* The Action Plan must be submitted to the Field/Indian Office within 90 days of notification of approval by HUD of the PHAs/IHAs application.

III. FSS Program Guidelines

In a separate notice in today's edition of the **Federal Register**, HUD has published guidelines for implementation of the FSS program. PHA, IHAs and other interested parties must consult that Notice to acquaint themselves fully with the operational details of the FSS program.

IV. Other Matters

Environmental Impact

On March 29, 1991, the Department published a notice (NOFA) announcing the availability of funding for public housing development (56 FR 13246). In that NOFA, the Department noted that section 554 of the National Affordable Housing Act required that not less than 10 percent of the funds appropriated in FY 1991 for public housing development be allocated for use in the FSS Program. In connection with publication of the March 29, 1991 public housing development NOFA, the Department made a Finding of No Significant Impact (FONSI) with respect to the environment in accordance with HUD regulations at 24 CFR part 50 implementing section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). That FONSI is applicable to the FSS program, and is available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the Office of the Rules Docket Clerk, 451 Seventh Street, SW., room 10276, Washington, DC 20410.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this NOFA does not have potential for significant impact on family formation, maintenance, and general well-being; and, thus, is not subject to review under the Order. The NOFA would have a positive impact on families to the extent that it would provide opportunities for families to become self-sufficient and gain economic independence.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this NOFA would not have substantial, direct effects on States, on their political subdivisions, or on their relationship with the Federal government, or on the distribution of power and responsibilities among the various levels of government. The NOFA's major effects would be on individuals.

HUD Reform Act

Section 102(d) of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3531) (the Reform Act), which requires the Secretary to certify that assistance within the jurisdiction of the Department to any housing project shall not be more

than is necessary to provide affordable housing after taking account of other assistance specified in section 201(b)(1) of the Reform Act, and which also requires the Secretary to adjust the amount of assistance awarded or allocated to an application to compensate in whole or in part, as appropriate, for any changes reported under section 201(c) of the Reform Act, would apply to public and Indian housing incentive awards. These requirements will become effective after the Department publishes a final rule to implement the Reform Act.

Federal Domestic Assistance

The Catalog of Federal Domestic Assistance Program number is 14.850.

Authority: Section 23, United States Housing Act of 1937, as added by sec. 554, Cranston-Gonzalez National Affordable Housing Act (Pub. L. 101-625, approved November 28, 1990); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Public housing development regulations are published at 24 CFR part 941; the program requirements for FY 1991 were published as Notice PIH 91-8 (HUD), dated March 29, 1991.

Indian Housing development regulations are published as an Interim Rule (55 FR 24722) at 24 CFR part 905; the program requirements for FY 1991 were published as Notice PIH 91-15 (IHA) on May 10, 1991.

FSS program guidelines are published elsewhere in today's edition of the **Federal Register.**

Dated: August 28, 1991.

Joseph G. Schiff,

Assistant Secretary for Public and Indian Housing.

Appendix A—Names and Addresses of HUD Field/Indian Offices

Region I
- Boston Regional Office, Thomas P. O'Neill, Jr., Fed Bldg, 10 Causeway St., Room 375, Boston, MA 02222, (617) 565-5234
- Hartford Office, 330 Main St., First Floor, Hartford, CT 06106, (203) 240-4522
- Manchester Office, Norris Cotton Fed Bldg, 275 Chestnut St, Manchester, NH 03101, (603) 666-7681
- Providence Office, 330 John O. Pastore Fed Bldg & US Post Office—Kennedy Plaza, Providence, RI 02903, (401) 528-5351

Region II
- New York Regional Office, 26 Federal Plaza, New York, NY 10278, (212) 264-6500
- Buffalo Office, 465 Main St, Lafayette Ct, Buffalo, NY 14203, (716) 846-5755
- Newark Office, Military Park Bldg, 60 Park Place, Newark, NJ 07102, (201) 877-1662

Region III
- Philadelphia Regional Office, Liberty Square Bldg, 105 S 7th St, Philadelphia, PA 19106, (215) 597-2560
- Baltimore Office, The Equitable Bldg, 3rd Fl, 10 N Calvert St, Baltimore, MD 21202, (301) 962-2520
- Charleston Office, 405 Capitol St, Ste 708, Charleston, WV 25301, (304) 347-7000
- Pittsburgh Office, Old PO Courthouse Bldg, 7th Ave & Grant St, Pittsburgh, PA 15219, (412) 644-6428
- Richmond Office, 400 N 8th St, PO Box 10170, Richmond, VA 23240, (804) 771-2721
- Washington, DC Office, 820 First St, NE., Washington, DC 20002, (202) 275-8185

Region IV
- Atlanta Regional Office, Richard B Russell Fed Bldg, 75 Spring St, SW., Atlanta, GA 30303, (404) 331-5136
- Birmingham Office, Beacon Ridge Tower, 600 Beacon Pkwy West, Ste 300, Birmingham, AL 35209, (205) 731-1617
- Caribbean Office, New San Juan Office Bldg, 159 Carlos E. Chardon Ave, San Juan, PR 00918, (809) 766-6121
- Columbia Office, Strom Thurmond Fed Bldg, 1835 Assembly St, Columbia, SC 29201, (803) 765-5592
- Greensboro Office, 415 N Edgeworth St, Greensboro, NC 27401, (919) 333-5361
- Jackson Office, Dr A H McCoy Fed Bldg, 100 W Capitol St, room 910, Jackson, MS 39269, (601) 965-5308
- Jacksonville Office, 325 W Adams St, Jacksonville, FL 32202, (904) 791-2626
- Knoxville Office, John J. Duncan Fed Bldg, 710 Locust St, Third Floor, Knoxville, TN 37902, (615) 549-9384
- Louisville Office, PO Box 1044, 601 W Broadway, Louisville, KY 40201, (502) 582-5251
- Memphis Office, One Memphis Place, 200 Jefferson Ave, suite 200, Memphis, TN 38103, (901) 544-3367
- Nashville Office, 251 Cumberland Bend Dr, suite 200, Nashville, TN 37228, (615) 763-5213,

Region V
- Chicago Regional Office, 626 W Jackson Blvd, Chicago, IL 60606, (312) 353-5680
- Cincinnati Office, Fed Office Bldg, rm 9002, 550 Main St, Cincinnati, OH 45202, (513) 684-2884
- Cleveland Office, One Playhouse Sq, 1375 Euclid Ave, rm 420, Cleveland, OH 44114, (216) 522-4058
- Columbus Office, 200 N High St, Columbus, OH 43215, (614) 469-5737
- Detroit Office, Patrick V McNamara Fed Bldg, 477 Michigan Ave, Detroit, MI 48226, (313) 226-7900
- Grand Rapids Office, 2922 Fuller Ave, NE, Grand Rapids, MI 49505, (616) 456-2100
- Indianapolis Office, 151 N Delaware St, Indianapolis, IN 46204, (317) 226-6306
- Milwaukee Office, Henry S Ruess Fed Plaza, 310 W Wisconsin Ave, Milwaukee, WI 53203, (414) 297-3214
- Minneapolis-St Paul Office, 220 Second St, S, Minneapolis, MN 55401, (612) 370-3000

Region VI
- Ft Worth Regional Office, 1600 Throckmorton, PO Box 2905, Ft Worth, TX 76113, (817) 885-5401
- Houston Office, Norfolk Tower, 2211 Norfolk, Ste 200, Houston, TX 77098, (713) 753-3274
- Little Rock Office, Lafayette Bldg, Ste 200, 523 Louisiana, Little Rock, AR 72201, (501) 378-5931
- New Orleans Office, Fisk Federal Bldg, 1661 Canal St, New Orleans, LA 70112, (504) 589-7200
- Oklahoma City Office, Office Murrah Fed Bldg, 200 NW. 5th St, Oklahoma City, OK 73102, (405) 231-4181
- San Antonio Office, Washington Square, 800 Dolorosa St, San Antonio, TX 78207, (512) 229-6800

Region VII
- Kansas City regional Office, 400 State Ave, Professional Bldg, Kansas City, KS 66101, (913) 236-2162
- Des Moines Office, Federal Bldg, 210 Walnut St, rm 239, Des Moines, IA 50309, (515) 284-4512
- Omaha Office, Braiker/Brandeis Bldg, 210 S 16th St, Omaha, NE 68102, (402) 221-3703
- St Louis Office, 1222 Spruce St, St Louis, MO 63103, (314) 539-6560

Region VIII
- Denver Regional Office, Executive Tower Bldg, 1405 Curtis St, Denver, CO 80202, (303) 844-4513

Region IX
- San Francisco Regional Office, 450 Golden Gate Ave, PO Box 36003, San Francisco, CA 94102, (415) 556-4752
- Honolulu Office, 300 Ala Moana Blvd, rm 3318, Honolulu, HI 96850, (808) 541-1323
- Los Angeles Office, 1615 W Olympic Blvd, Los Angeles, CA 90015, (213) 251-7122
- Phoenix Office, One N First St, Ste 300, PO Box 13468, Phoenix, AZ 85002, (602) 379-4434
- Sacramento Office, 777 12th St, Ste

200, Sacramento, CA 95814, (916) 551–1351

Region X

Seattle Regional Office, Arcade Plaza Bldg, 1321 Second Ave, Seattle, WA 98101, (206) 553–5414

Anchorage Office, 222 W 8th Ave, #64, Anchorage, AK 99513, (907) 271–4170

Portland Office, 520 SW. 6th Ave, Portland, OR 97204, (503) 326–2561

Indian Housing Offices

Office of Indian Programs, Chicago Regional Office, 626 W Jackson Blvd, Chicago, IL 60606, (312) 886–4532, or 800–735–3239

Indian Programs Division, Oklahoma City Office, Office Murrah Fed Bldg, 200 NW. 5th St, Oklahoma City, OK 73102, (405) 736–4101

Office of Indian Programs, Denver Regional Office, Executive Tower Bldg, 1405 Curtis St, Denver, CO 80202, (303) 844–2963

Office of Indian Programs, Phoenix Office, Two Arizona Center, 400 North 5th Street, Suite 1650, Phoenix, AZ 85004, (602) 261–4156

Indian Housing Division, Anchorage Office,222 W 8th Ave, #64, Anchorage, AK 99513, (907) 271–4633

Office of Indian Programs, Seattle Regional Office, Arcade Plaza Bldg, 1321 Second Ave, Seattle, WA 98101, (206) 553–4633

Appendix B—Public Housing Application Submission Checklist

1. PHA Application, Form HUD–52470:

—Current General Certificate (Form HUD–9009), if applicable

—Cooperation Agreement (Form HUD–52481) and/or other State or local requirement, if applicable

—PHA Resolution in support of PHA application (HUD–52471)

—For front-end ACC

• Local Governing Body Resolution referencing PHA request for front-end funds (HUD–52472).

• Form HUD–52471 (above) must also refer to the request.

2. PHA Certifications:

—HUD–50070, Certification for a Drug-Free Workplace

—SF-LLL, Disclosure of Lobbying Activities

—Section 5(j) Certification

—Non-Discrimination and Equal Opportunity Certification

3. Certification concerning New Construction: If applying for new construction, the PHA must certify that new construction is less expensive than acquisition or acquisition with rehabilitation (including, if applicable, estimates for lead-based paint testing and abatement); or the PHA must certify that there is an insufficient stock of existing housing available for acquisition/rehabilitation. If HUD cannot approve new construction, the PHA should state whether it will accept acquisition or rehabilitation or if HUD should reject the application.

Appendix C—Threshold Requirements Public Housing

Threshold Requirements

1. Legal Eligibility. The PHA has the legal capability to develop, own, and operate public housing under the Act and has:

(a) Approved and current organization documents;

(b) Local cooperation to cover the units requested (in the form of the required Cooperation Agreement) and any other required local authority, including a Local Governing Body Resolution if front-end funds are requested under an ACC;

(c) Properly executed and complete PHA resolution; and

(d) Required advice or certifications, such as under the Drug Free Workplace Act of 1988, HUD Reform Act of 1989, and Public Law 101–121 (Byrd Amendment).

2. Fair Housing and Equal Opportunity. The PHA certification of intent to comply with all applicable civil rights laws is acceptable, and there are:

(a) No pending civil rights suits against the applicant brought by the Department of Justice.

(b) No outstanding findings of noncompliance with civil rights statutes, Executive Orders or regulations as a result of formal administrative proceedings, or the Secretary has not issued a charge against the applicant under the Fair Housing Act, unless the applicant is operating under a conciliation or compliance agreement designed to correct the areas of noncompliance; or

(c) No deferral of the processing of applications from the applicant imposed by HUD under title VI of the Civil Rights Act of 1964, the Attorney General's Guidelines (28 CFR 50.3), the HUD Title VI regulations (24 CFR 1.8) and procedures (HUD Handbook 8040.1), or under Section 504 of the Rehabilitation Act of 1973 and the HUD Section 504 regulations (24 CFR 8.57).

3. Housing Need and HAP Compliance. There is a need and a market for the project in the community, taking into consideration other assisted housing (e.g., HUD or FmHA) existing or proposed, and the units requested are either within applicable HAP goals or comparable estimates for non-HAP areas.

4. Administrative Capability. The PHA has (or will have pursuant to a written plan approved by HUD or a Court Settlement Agreement) the capability to develop and manage the proposed housing. No application shall be determined approvable if the PHA has failed to return excess advances received during development or modernization, or amounts determined by HUD to constitute excess financing based on a HUD approved ADCC or AMCC.

5. Environment. There are no environmental factors, such as sewer moratoriums, precluding development in the community for which units are requested.

6. Housing Type. If new construction is requested, the PHA has provided documentation and certifications to support the requested units and indicated how the application is to be disposed of if new construction cannot be approved (i.e., change to acquisition or rehabilitation, or return the application to the PHA).

7. Household Type. HUD must determine, in writing, that there is a need for the household type and bedroom sizes of the units requested, either relative to the HAP or, if there is no HAP, relative to the total supply of units in the market area and the total need at appropriate income levels.

8. Section 5(j) Certification.[1] The PHA must certify that:

(a) 85 percent of its public housing dwelling units:

(i) Are maintained in substantial compliance with the Section 8 housing quality standards (24 CFR 882.109); or

(ii) Will be so maintained upon completion of modernization for which funding has been awarded; or

(iii) will be so maintained upon completion of modernization for which applications are pending that have been submitted in good faith under Section 14 of the Act (or a comparable State or local government program) and that there is a reasonable expectation, as determined by HUD in writing,[2] that the application would be approved; or

[1] In connection with FSS Incentive Award units, PHAs may *not* certify in order to meet the requirements under section 5(j) that (a) the units will replace units that are demolished or disposed of, (b) the units are required to comply with court orders or directions of the Secretary, or (c) that the units in this application are for the major reconstruction of an obsolete project (MROP).

[2] Upon the request of a PHA, the Field Office shall provide a written determination as to the approvability of an modernization application submitted but not yet funded. Approvability shall be based solely on whether the application meets the required criteria, not availability of funds or other priority.

(b) It has demands for family housing not satisfied by the Section 8 rental certificate or rental voucher programs for which it plans to construct or acquire projects of not more than 100 [3] units.

9. Resident Involvement. PHA certification that the application was developed with involvement and consultation of affected public housing residents, and includes a meaningful ongoing role for resident management corporations, resident councils, or other forms of resident involvement where RMCs and RCs do not exist. This certification shall include a support letter from RMCs and RCs where they exist, or documentation of other resident involvement and consultation.

Appendix D—Initial Screening Checklist Indian Housing

A. Application Form HUD–52730: Application, Form HUD–52730

B. IHA Resolutions: IHA Resolution(s) containing the following:

1. A statement that authorizes the submission of the application for units;

2. A statement explaining how solid waste disposal for the proposed development will be addressed;

3. A statement regarding the planned access to public utility services and a listing of any official commitment(s) for these utility services for the development;

4. A statement advising HUD of any persons with a pecuniary interest in the proposed development. Persons with a pecuniary interest in the development shall include but not be limited to any developers, contractors, and consultants involved in the application, planning, construction or implementation of the development. During the period when an application is pending or assistance is being provided, the applicant shall update the disclosure required within thirty days of any substantial change.

C. Certifications: Each application must contain the following certifications provided by the Executive Director on IHA letterhead:

a. Certification Regarding Drug-Free Workplace Requirements, as required by 24 FR 630(b), by submitting form HUD–50070.

b. Certification that the IHA will comply with 24 CFR 8, which implements section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975.

c. Certification that the IHA will comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended.

d. If new construction is requested, certification that there is insufficient existing housing in such neighborhood to undertake the development of housing through acquisition of existing housing or rehabilitation.

e. Certification that the IHA will adhere to the Uniform Accessibility Standards/Architectural Barriers Act of 1968.

f. For IHAs established under State law, a certification that no Federal appropriated funds will be used for lobbying purposes (Form "Certification for Contracts, Grants, Loans and Cooperative Agreements," SF–LLL–A).

D. Letters: Each application shall be accompanied by a letter of support signed by the CEO of the general local government indicating:

a. Support for the proposed Indian housing application and development (reference I.E.2.d);

b. That the IHA is authorized to apply for planning funds for the development;

c. Assurance to HUD that access road needs will be identified by Tribal Resolution (with BIA concurrence) and entered on the BIA Indian Reservation Roads prioritization schedule used by BIA for resource allocation (25 CFR part 170; 57 BIAM 4 and Supplement 4; and 24 CFR part 905, Appendix I, Item 6).

E. Supporting Documentation: Each application must be accompanied by the following supporting documentation:

a. If new construction is proposed, evidence that the cost of new construction is less than the cost of acquisition or acquisition plus rehabilitation.

b. Disclosure of additional assistance from other sources that will be used in association with the project for which the applicant is seeking assistance.

c. Demonstration of financial feasibility for the proposed development.

d. Statement about the overall and relative need for assisted housing in the area.

e. Analysis of waiting list of applicant families that represents each housing bedroom size group (i.e., Group I, II, and III).

F. Items that Should be Submitted, if not Previously Submitted: If not previously submitted, or if changes have occurred since previous submission, the IHA should furnish:

a. A certified copy of the Transcript of Proceedings containing the IHA resolution pursuant to which the application is being made.

b. IHA Organization Transcript or General Certificate.

c. Tribal Ordinance.

d. Cooperation Agreement(s). Where the provisions of the necessary local government cooperation are not contained in the ordinance or other enactment creating the IHA, the IHA shall submit an executed cooperation agreement (or a copy thereof) for the location involved, which is sufficient to cover the number of units in the application.

G. Optional Items: If the IHA is prepared, it may submit Preliminary Site Reports indicating pre-approved sites, and BIA approved leases for the proposed project site(s), as applicable.

H. FSS Certification: Resident Involvement. IHA certification that the application was developed with involvement and consultation of affected Indian housing residents, and includes a meaningful ongoing role for resident management corporations, resident councils, or other forms of resident involvement where RMCs and RCs do not exist. This certification shall include a support letter from RMCs and RCs where they exist, or documentation of other resident involvement and consultation.

[3] FSS applicants for public or Indian housing may apply for no more than 50 units.

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federal register

Monday
September 30, 1991

Part VIII

Department of Housing and Urban Development

Office of the Assistant Secretary

Family Self-Sufficiency Program; Funding Availability for FY 1991 and Procedures for Allocating Funds and Approving Applications for Rental Certificates and Rental Vouchers; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. N-91-3282; FR-3062-N-01]

NOFA—Invitation for Section 8 Incentive Award Rental Vouchers and Rental Certificates in Connection With the Family Self-Sufficiency Program in FY 1991

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of funding availability (NOFA) for FY 1991 and procedures for allocating funds and approving PHA/IHA applications for rental certificates and rental vouchers under the Family Self-Sufficiency Program.

SUMMARY: This NOFA identifies the amount of budget authority available for competitive Family Self-Sufficiency (FSS) incentive awards of Rental Voucher and Rental Certificate funding during FY 1991 for public housing agencies (PHAs) and Indian housing authorities (IHAs). This NOFA also invites PHAs/IHAs to submit applications for housing assistance funds, provides instructions to PHAs/IHAs governing the submission of applications, and describes procedures for rating, ranking, and approving PHA/IHA applications.

The purpose of the Rental Voucher and the Rental Certificate programs is to assist eligible families to pay rent for decent, safe, and sanitary housing. The purpose of the FSS program is to promote the development of local strategies to coordinate the use of public housing and rental assistance under the section 8 Rental Certificate and Rental Voucher programs with public and private resources, to enable eligible families to achieve economic independence and self-sufficiency. The FSS program guidelines are contained in today's **Federal Register**.

This NOFA is separate from the incremental fair share NOFA published in the **Federal Register** on May 29, 1991 (56 FR 24290) for the Rental Certificate and Rental Voucher programs. A separate NOFA for the Public and Indian Housing Program FSS Incentive Award is also published in today's **Federal Register**.

DATES: Applications must be received in the HUD Field Office/Indian Programs Office by close of business on January 10, 1992.

FOR FURTHER INFORMATION CONTACT: Gerald J. Benoit, Director, Rental Assistance Division, Office of Elderly and Assisted Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone number (202) 708–0477. Hearing- or speech-impaired individuals may call HUD's TDD number (202) 708–4594. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this NOFA have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980. No person may be subjected to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**. Public reporting burden for this collection of information is estimated to include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Information on the estimated public reporting burden is provided under the heading, *Other Matters*, in the Notice of Program Guidelines for the Family Self-Sufficiency Program, published elsewhere in today's **Federal Register**. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street, SW., room 10276, Washington, DC 20410; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, attention: HUD Desk Officer, room 3001, Washington, DC 20503.

I. Purpose and Substantive Description

(A) Authority

The FSS program is authorized by section 554 of the National Affordable Housing Act (NAHA) (Pub. L. 101–625), approved November 28, 1990, which adds section 23 to the United States Housing Act of 1937. The notice of program guidelines governing the FSS program is published in today's **Federal Register**. The regulations for allocating housing assistance budget authority are published at 24 CFR part 791.

(B) Background

The purpose of the FSS program, as enunciated in section 554, "is to promote the development of local strategies to coordinate use of public housing and assistance under the certificate and voucher programs under section 8 with public and private resources, to enable eligible families to achieve economic independence and self-sufficiency."

One component of the FSS program is the "Public Housing Agency Incentive Award Allocation" in fiscal years 1991 and 1992. Section 23(i)(1) directs HUD to "carry out a competition for budget authority for certificate and voucher assistance under Section 8 * * * [and to] allocate such budget authority to public housing agencies pursuant to the competition." Section 23(i)(2) further directs HUD to "establish performance criteria for public housing agencies (PHAs/IHAs) carrying out such local [self-sufficiency] programs." Section 23(i)(3) mandates that each PHA/IHA that "receives an allocation of budget authority [a PHA Incentive Award Allocation] * * * shall use such authority to provide assistance under [the PHA's/IHA's] local self-sufficiency program." To carry out the competition, section 23(i)(4) provides that "the Secretary shall reserve for allocation * * * not less than 10 percent of the portion of budget authority appropriated in each of fiscal years 1991 and 1992 for Section 8 that is available for purposes of providing assistance under the existing housing certificate and housing voucher programs for families not currently receiving assistance * * *."

(C) Allocation Amounts

(1) *Housing Needs Formula*

Approximately $340 million of budget authority is available for FSS Rental Vouchers and Rental Certificates and is being allocated to HUD Field Offices using the housing needs factors established in accordance with 24 CFR 791.402. In the event additional funding is made available for this FSS program, the Department will allocate funds to the HUD Regional Offices on the basis of the same formula used to allocate the funds in this NOFA. Regional Offices will sub-allocate funds to the Field Offices.

Funds made available under this NOFA for Fiscal Year 1991 that are not reserved for PHAs/IHAs prior to September 30, 1991, shall be carried over to Fiscal Year 1992 and will be made available for this FSS program when the Fiscal Year 1992 apportionment is provided.

(2) Metropolitan—Nonmetropolitan Mix

Separate housing needs factors were developed for the metropolitan and nonmetropolitan portions of each Field Office jurisdiction. The needs factors are described at 24 CFR part 791 and are

the same factors used in allocating funds for the non-FSS incremental rental vouchers and rental certificates.

On a nationwide basis, approximately 20 percent of the Fiscal Year 1991 budget authority for the FSS program under the Rental Certificate Program and the Rental Voucher Program is designated for use in nonmetropolitan areas. The nonmetropolitan housing needs factors were applied to the housing assistance budget authority available for use in nonmetropolitan areas, and metropolitan housing needs factors were applied to the housing assistance budget authority available for use in metropolitan areas.

(3) Program Type

Attachment 5 to this NOFA announces the allocation of budget authority for the Rental Voucher Program and for the Rental Certificate Program to each Field Office based on the housing needs factors. The allocation of budget authority to each Field Office is the total amount for both programs. The allocations have been structured to give Field Offices flexibility in approving PHA applications for a specific program type (Rental Voucher or Rental Certificate) by allocation of available rental certificate or rental voucher budget authority among allocation areas in the Field Office jurisdiction. This NOFA also provides an estimate of the total number of Rental Vouchers and Rental Certificates that could be funded from the housing assistance allocated to each Field Office. These estimates are based on the average fair market rents for two-bedroom units in the Field Office's jurisdiction and on a 49 percent Rental Certificate Program and a 51 percent Rental Voucher Program mix. The actual number of units assisted will vary from these estimates because of differences in the actual bedroom-size mix and the actual mix of Rental Vouchers and Rental Certificates that are funded in each Field Office.

(D) Eligibility

All PHAs/IHAs are invited by this NOFA to submit applications for an incentive award of Rental Vouchers (24 CFR part 887) and Rental Certificates (24 CFR part 882) for use in connection with the FSS Program.

(E) Selection Criteria/Ranking Factors

(1) General

To provide each applicant PHA/IHA a fair and equitable opportunity to receive an incentive award of Rental Vouchers and Rental Certificates during FY 1991, Field Offices will use the objective selection criteria stated in this NOFA to rate all applications found acceptable for further processing. The Field Office will use selection criteria 1 through 4 identified below:

(a) *Selection Criterion 1: PHA/IHA Administrative Capability (45 points)*—(i) *Description:* Overall PHA/IHA administrative ability as evidenced by factors such as leasing rates and correct administration of housing quality standards, compliance with fair housing and equal opportunity program requirements, tenant rent computation, and rent reasonableness requirements in the Rental Voucher, Rental Certificate, and Moderate Rehabilitation Programs. If a PHA/IHA is not administering a Rental Certificate, Rental Voucher, or Moderate Rehabilitation Program, the Field Office will rate PHA/IHA administration of the Public or Indian Housing Program. A PHA/IHA administering a Rental Voucher, Rental Certificate, or Moderate Rehabilitation Program will not be rated on the administration of its Public or Indian Housing Program. If a PHA/IHA is not administering a Rental Certificate, Rental Voucher, Moderate Rehabilitation, Public Housing or Indian Housing Program, the Field Office will assess the administrative capability of the PHA/IHA based on such factors as experience of staff, support of the PHA/IHA by the local government, and the PHA's/IHA's administrative experience with non-HUD housing programs.

(ii) *Rating: 26–45 points.* The Field Office rates overall PHA/IHA administration of the Rental Voucher, Rental Certificate, and Moderate Rehabilitation Programs (or public/Indian housing or other housing programs) as excellent; there are no serious outstanding management review, fair housing and equal opportunity monitoring review, or Inspector General audit findings; and the leasing rate for rental vouchers and rental certificates (or occupancy rate for public/Indian housing units) under Annual Contributions Contract (ACC) for one year was at least 95% as of September 30, 1990;

1–25 points. The Field Office rates overall PHA/IHA administration of the Rental Voucher, Rental Certificate, and Moderate Rehabilitation Programs (or public/Indian housing or other housing programs) as good; any management review, fair housing and equal opportunity monitoring review, or Inspector General audit findings are being satisfactorily addressed; *and* the leasing rate for rental vouchers and rental certificates (or occupancy rate for public/Indian housing units) under ACC for one year was at least 85 percent as of September 30, 1990.

0 points. If the PHA/IHA does not satisfy any of the elements in this selection criterion, assign 0 points.

(b) *Selection Criterion 2: Commitment of Private and Public Resources (35 points)*—(i) *Criterion:* Written commitment of resources from private industry, for-profit and not-for-profit entities, and local public agencies to provide services and assistance appropriate to a FSS Program. Services include: Child care; transportation necessary to receive services; remedial education; education for completion of secondary or post-secondary schooling; job training, preparation and counseling; substance abuse treatment and counseling; training in homemaking and parenting skills; training in money management; training in household management; counseling in homeownership responsibilities and opportunities available for rental and homeownership in the private housing market; and job development and placement.

(ii) *Rating: 21–35 points.* Written commitments to provide 6 or more services and funding by both the public and private sectors.

1–20 points. Written commitments to provide 1 to 5 services (funding by public or private sectors).

0 points. No written service commitments.

(c) *Selection Criterion 3: Successful Implementation of Any Existing Local Self-Sufficiency Program (5 points)*—(i) *Criterion:* Successful and outstanding implementation of any existing local self-sufficiency program.

(ii) *Rating: 3–5 points.* PHA/IHA has implemented any local self-sufficiency program as evidenced by the number of participants enrolled and the accomplishment of other stated objectives.

1–2 points. PHA/IHA has developed any local self-sufficiency program.

0 points. No local self-sufficiency program.

(d) *Selection Criterion 4: Program Coordinating Committee* (See section V of FSS Notice of Program Guidelines) (15 points)

(i) *Criteria:* Representation on the Program Coordinating Committee from the private and public sectors. Organizational status of the Program Coordinating Committee.

(ii) *Rating: 9–15 points.* Program Coordinating Committee represents the public and private sectors. Program Coordinating Committee is to meet regularly and has met at least once. Action Plan is being or has been

developed by Program Coordinating Committee.

1–8 points. Program Coordinating Committee represents the public and private sectors. Selection of Program Coordinating Committee members is not completed or the committee has not held the initial meeting. Timetable for selecting Program Coordinating Committee members and date of first meeting is reasonable.

0 points. If the PHA/IHA does not satisfy any of the elements in this selection criterion, assign 0 points.

(F) Unacceptable Applications

(1) Within 14 calendar-days from HUD's written notice to cure technical deficiencies (see section IV of this NOFA), the Field Office will disapprove PHA/IHA applications that it determines are not acceptable for processing. The Field Office notification of rejection letter must state the basis for the Field Office decision.

Material to cure technical deficiencies which is received after close of business of the fourteenth day after HUD's written notice will not be accepted. If the PHA/IHA has not cured all technical deficiencies by this deadline, the application will be rejected as incomplete. All PHAs/IHAs are encouraged to review the initial screening checklist provided in section III of this NOFA. The checklist identifies all technical requirements needed for application processing.

A PHA/IHA application must comply with the requirements of 24 CFR 882.204(a) or 887.55(b) and this NOFA (including the drug-free workplace certification and the anti-lobbying certification and disclosure requirements). Except for the technical deficiencies listed in Section IV of this NOFA, all application elements must be submitted to HUD by the application submission deadline. All technical deficiencies must be corrected by the end of the 14-day technical deficiency correction period.

(2) Applications that fall into any of the following categories will not be processed:

(a)(i) The Department of Justice has brought a civil rights suit against the applicant PHA/IHA, and the suit is pending;

(ii) There are outstanding findings of noncompliance with civil rights statutes, Executive Orders, or regulations as a result of formal administrative proceedings, or the Secretary has issued a charge against the applicant under the Fair Housing Act, unless the applicant is operating under a conciliation or compliance agreement designed to correct the areas of noncompliance;

(iii) HUD has denied application processing by HUD under title VI of the Civil Rights Act of 1964, the Attorney General's Guidelines (28 CFR 50.3), and the HUD Title VI regulations (24 CFR 1.8) and procedures (HUD Handbook 8040.1), or under section 504 of the Rehabilitation Act of 1973 and HUD regulations (24 CFR 8.57).

(b) The PHA/IHA has serious, unaddressed, outstanding Inspector General audit findings or fair housing and equal opportunity monitoring review findings or Field Office management review findings for one or more of its Rental Certificate, Rental Voucher, or Moderate Rehabilitation Programs, or, in the case of a PHA/IHA that is not currently administering a Rental Certificate, Rental Voucher, or Moderate Rehabilitation Program, for its Public Housing Program;

(c) The leasing rate for Rental Certificates and Rental Vouchers under ACC for at least one year is less than 75 percent, or, in the case of a PHA/IHA not currently administering a Rental Certificate or Rental Voucher Program, a leasing rate for all units available for occupancy in the Public or Indian Housing Programs is less than 75 percent; or

(d) The PHA/IHA is involved in litigation and HUD determines that the litigation may seriously impede the ability of the PHA/IHA to administer an additional increment of Rental Vouchers and Rental Certificates.

(G) Local Government Comments

The Field Office will obtain section 213 comments, in accordance with 24 CFR part 791, subparts B and C, from the unit of general local government. Comments submitted by the unit of general local government must be considered before an application can be approved.

(H) Funding Applications

Funding of PHA/IHA applications for Fiscal Year 1991 FSS program incentive awards will be limited by the number of metropolitan or nonmetropolitan units allocated to the Field Office that has jurisdiction over the PHA/IHA. Based on past PHA/IHA experience and Field Office knowledge of PHA/IHA capacity to perform, the Field Office must determine if the number of units requested by each PHA/IHA can reasonably be placed under lease by the PHA/IHA within 12 months. If the Field Office determines that the PHA/IHA cannot enroll the number of FSS families and place under lease the number of units requested, the Field Office shall reduce the number of requested units to a number that can be placed under lease within 12 months. If after this initial reduction is taken (if any) the Field Office determines that an across-the-board reduction in the number of units requested by each PHA/IHA will allow a greater number of PHAs/IHAs to participate in the Fiscal Year 1991 incentive award competition, the Field Office may reduce all applications by the same percentage. In any event, no application should be funded for fewer than 25 units unless the PHA/IHA requests fewer than 25 units.

In the case of regional and State-wide PHAs/IHAs, one application will be submitted for metropolitan areas and one application for nonmetropolitan areas and each application will be considered independently. Each PHA/IHA application will be limited by the number of metropolitan or nonmetropolitan units allocated to the Field Office that has jurisdiction over the PHA/IHA (subject to reduction as provided in the preceding paragraph) and each application will be reviewed for the PHA's/IHA's ability to place the number of units requested under lease within 12 months. Likewise, each application submitted by a regional or State-wide PHA/IHA must meet all application requirements as stated in this NOFA.

In those instances where a Field Office funds applications according to rank order but finds that it has a number of units left, but not enough to fund the next fundable application in its entirety, the next application can be funded to the extent of the number of units available without requiring an across-the-board adjustment.

If a PHA/IHA applies for a specific program (i.e., rental certificates or rental vouchers) and funding for the specified program is not available, the Field Office will award the available form of assistance, even though that program was not specifically requested by the applicant.

(I) Reallocations of Funds

The Field Office must make every reasonable effort to use the funds made available for the Field Office. It may be necessary, however, to reallocate funds from one Field Office to another Field Office when the funds are not likely to be used in the Field Office to which they were initially assigned. In such cases, the following procedures shall be followed:

(a) Reallocations Within the Same State

If the allocation of funds to a Field Office cannot be used within the Field Office, the Regional Office must reallocate funds from that Field Office

to another Field Office within the same State.

(b) Reallocations Between States

If a Regional Office cannot use funds within the same State, the Regional Office may request Headquarters approval to reallocate funds to another State within the jurisdiction of the Regional Office.

A request for Headquarters approval of a reallocation between States must explain the reasons that funds cannot be used in the original State, the amount being withdrawn from the original State, the program type, the metropolitan/nonmetropolitan mix, and the amount to be reallocated subsequently to each State. Such requests must be submitted to Headquarters (Attention: Budget Division, Office of Management and Policy, PIH) for approval.

(c) Reallocation Between Metropolitan and Nonmetropolitan Areas

The Regional Office must follow the original fund assignments to metropolitan and nonmetropolitan areas when it reallocates unused budget authority. If there are not enough approvable applications for the designated metropolitan or nonmetropolitan budget authority, the Regional Office may switch the budget authority between a metropolitan and nonmetropolitan area within the same State provided that an offsetting switch can be made in another State within the same Region. If an offsetting switch cannot be made and the metropolitan or nonmetropolitan amounts require changes to the regional fund assignments, the Regional Office must obtain the approval of the Budget Division, Office of Management and Policy, PIH, before switching budget authority between a metropolitan and a nonmetropolitan area.

(J) Notification of Funds Awarded

After the Field Offices have reviewed, rated, ranked, and approved the applications, Regional Offices must submit to Headquarters a list of all approved applications for the Federal Fiscal quarters ending December, March, June, and September, listed by Field Office. The Regional Office application approval list for each calendar quarter is due in Headquarters (Attention: Budget Division, Office of Management and Policy, PIH) on the tenth working day of April, July, October, and January, (i.e., the months following the end of each calendar quarter).

The Regional Offices must provide the following information for each application approved:

(a) The name and address of the PHA/IHA;

(b) The project number, the number of Rental Vouchers and the number of Rental Certificates, as applicable, approved for the PHA/IHA;

(c) The amount of contract authority and budget authority stated separately for Rental Vouchers and Rental Certificates;

On March 14, 1991, the Department published in the **Federal Register** a final rule to implement section 102 of the Department of Housing and Urban Development Reform Act of 1989 (24 CFR part 12, 56 FR 11032). Section 102 contains a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by the Department.

Since HUD makes assistance under the programs available on a competitive basis, part 12 requires HUD to:

—Ensure the documentation and other information regarding each application submitted to the Department are sufficient to indicate the basis upon which assistance was provided or denied. HUD must make this material available for public inspection for a five-year period. (§ 12.14(b)) HUD will provide further guidance on how this material may be accessed in a later Notice published in the **Federal Register.**

—Publish a Notice in the **Federal Register** at least quarterly indicating the recipients of the assistance. (§ 12.16(a))

(K) Administrative Fees

The FSS administrative fee structure is outlined in the FSS Program Guidelines and is identical to the fee described in the incremental Rental Certificate and Rental Voucher NOFA. Administrative fees used in connection with the FSS program are as follows:

(1) Ongoing—8.2 percent.
(2) Preliminary—$275.
(3) Hard-to-house—$45.

For budget preparation, submission of requisitions and approving year-end operating statements, PHAs should use the August 3, 1990 Housing Notice (H–90–53), Administrative Fee Requirements for the Housing Voucher and Certificate Programs to determine the blended rate for all rental certificate or rental voucher increments for a given PHA/IHA.

II. Application Process

(A) Forms

Form HUD–52515 may be obtained from the local HUD Field Office. To assist PHAs/IHAs, the following are attached to this notice: Form HUD 52515 [attachment 1]; the Certification for a Drug-Free Workplace [attachment 2]; the text for Certification Regarding Lobbying [attachment 3]; and Standard Form LLL, Disclosure of Lobbying Activities [attachment 4].

(B) Application Submission Deadline

PHA/IHA applications must be received in the HUD Field Office by close of business on January 10, 1992. Field Offices will notify PHAs/IHAs of the exact address and room number where applications must be received.

III. Application Submission Requirements

(A) General

PHA/IHA applications must be submitted to the local Field Office and Office of Indian Programs, as appropriate, on Form HUD–52515 in accordance with the applicable program regulations.

The PHA/IHA application should include an explanation of how the application meets, or will meet, application selection criteria. Failure to submit a narrative description is not cause for application rejection; however, a Field Office can only rate and rank an application based on information it has on-hand.

Attachment 5 at the end of this NOFA lists by Field Office the number of units and budget authority allocated to each Field Office. Applicants are to request no more than the number of units available for metropolitan areas or nonmetropolitan areas as identified in attachment 5.

PHAs/IHAs shall submit only one application (HUD–52515) with the exception of regional and State-wide PHAs/IHAs. Regional and State-wide PHAs/IHAs are to submit one application for metropolitan areas and one application for nonmetropolitan areas. If both Rental Certificates and Rental Vouchers are requested on the same application, then the application will be given two project numbers, one for the Rental Certificate Program and one for the Rental Voucher Program.

(B) Certification Regarding Drug-Free Workplace

The Drug-Free Workplace Act of 1988 requires grantees of Federal agencies to certify that they will provide a drug-free workplace. Thus, each PHA/IHA must certify (even though it has done so previously) that it will comply with the drug-free workplace requirements in accordance with 24 CFR part 24, subpart F. (See attached Certificate for Drug-Free Workplace, attachment 2.)

(C) Certification Regarding Lobbying

Section 319 of the Department of the Interior Appropriations Act, Public Law 101–121, approved October 23, 1989, (31 U.S.C. 1352) generally prohibits recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan. The Department's regulations on these restrictions on lobbying are codified at 24 CFR part 87. To comply with 24 CFR 87.110, any PHA/IHA (other than an IHA that meets the definition of "person" in 24 CFR 87.105) submitting an application under this NOFA for more than $100,000 of budget authority assistance must submit a certification and, if warranted, a Disclosure of Lobbying Activities. To assist PHAs/IHAs, the text for the Certification Regarding Lobbying (attachment 3) and Standard Form LLL, "Disclosure Form to Report Lobbying" (attachment 4) are attached.

(D) Checklist for Technical Requirements

The following checklist specifies the required information which must be submitted in the PHA's/IHA's application. It is recommended but not required that the application contain a narrative explaining how the application meets the selection criteria.

INITIAL SCREENING CHECKLIST

(Application for FSS Rental Certificates and Rental Vouchers)

PHA		Field office		
Yes	No	Yes	No	
—	—	—	—	The application contains a completed Form HUD 52515.
—	—	—	—	The application states by number of bedrooms the total number of units requested by the PHA/IHA (i.e., one bedroom units, two bedroom units).
—	—	—	—	The application demonstrates that the project requested is consistent with the applicable Housing Assistance Plan, including the goals for meeting the housing needs of very low income families, or in the absence of such a plan, that the proposed project is responsive to the condition of the housing stock in the community and the housing assistance needs of very low income families residing in or expected to reside in the community.
—	—	—	—	The application demonstrates that the applicant qualifies as a public housing agency and is legally qualified and authorized to participate in the Rental Certificate and Rental Voucher program for the area in which the program is to be carried out. Such demonstration includes (i) the relevant enabling legislation, (ii) any rules and regulations adopted or to be adopted by the agency to govern its operations, and (iii) a supporting opinion from the agency counsel. If such documents are currently on file in the Field Office they do not have to be resubmitted.
—	—	—	—	The application includes a statement that the housing quality standards to be used in the operation of the program will be as set forth in 24 CFR 882.109 and 24 CFR 887.251 or that variations in the Acceptability Criteria are proposed. In the latter case, each proposed variation shall be specified and justified.
—	—	—	—	The application contains the PHA/IHA schedule of leasing which must provide for the expeditious leasing of units. In developing the schedule, a PHA/IHA must specify the number of units that are expected to be leased at the end of the three-month interval. The schedule must project lease-up by eligible families within twelve months or sooner after execution of the ACC by HUD.
—	—	—	—	The application contains estimates of the average adjusted income for prospective participants for each bedroom size.
Requirement for Drug-Free Workplace Certification and Anti-Lobbying Certification and Disclosure Statement				
—	—	—	—	The application meets HUD's drug-free workplace requirements set out at 24 CFR part 24, subpart F. (The application contains an executed Certification for a Drug-Free Workplace (attachment 2)).
—	—	—	—	The application meets HUD's regulations regarding anti-lobbying set out at 24 CFR part 87. The anti-lobbying requirements apply to applications that, if approved, would result in the PHA/IHA obtaining more than $100,000 in budget authority. To comply, PHAs/IHAs must submit an Anti-lobbying Certification (attachment 3) and, if warranted, a Disclosure of Lobbying Activities (attachment 4).

IV. Corrections to Deficient Applications

To be eligible for processing, an application must be received by the Field Office no later than the application submission deadline date and time specified at section II (B) of this NOFA. The Field Office will initially screen all

applications and notify PHAs/IHAs of technical deficiencies by letter. Field Office notification of PHAs/IHAs must be uniform.

The following is a list of items that may be submitted by a PHA/IHA during the technical correction period. This list is intended to be a complete list and only these items may be requested or submitted after the application submission deadline date.

- Signature on the form HUD–52515.
- Section 213 comments from local government.
- Proposed leasing schedule.
- Average adjusted income for prospective participants for each bedroom size.
- Drug-Free Workplace Certification.
- Anti-Lobbying Certification and, if warranted, Disclosure Statement of Lobbying Activities.

All PHAs/IHAs must submit corrections within 14 calendar days from the date of HUD's letter notifying the applicant of any such deficiency. Information received after close of business on the fourteenth day of the correction period will not be accepted and the application will be rejected on the basis of being incomplete. All PHAs/IHAs are encouraged to review the initial screening checklist provided in section III of this notice. The checklist identifies all technical requirements needed for application processing.

V. Other Matters

Environmental Impact

An environmental finding under the National Environmental Policy Act (42 U.S.C. 4321–4347) is unnecessary since the Rental Certificate Program and the Rental Voucher Program are part of the Section 8 Existing Housing Program, which is categorically excluded under HUD regulations at 24 CFR 50.20(d).

Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that this NOFA does not have substantial, direct effects on the States, on their political subdivisions, or on the relationship between the Federal government and the States, or on the distribution of power or responsibilities among the various levels of government, because this NOFA would not substantially alter the established roles of HUD, the States and local governments, including PHAs/IHAs.

Impact on the Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this NOFA does not have potential for significant impact on family formation, maintenance, and general well-being and, thus, is not subject to review under the Order. This is a funding notice that does not alter program requirements concerning family eligibility.

Authority: Sec. 23, United States Housing Act of 1937, as added by Sec. 554, Cranston-Gonzalez National Affordable Housing Act (Pub. L. 101–625); Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d))

Dated: September 5, 1991.

Joseph G. Schiff,

Assistant Secretary for Public and Indian Housing.

BILLING CODE 4210–33–M

Application for Existing Housing

Section 8 Housing Assistance Payments Program

Send original and two copies of this application form and attachments to the local HUD Field Office

U.S. Department of Housing and Urban Development
Office of Housing
Federal Housing Commissioner

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Attachment 1

OMB Approval No. 2502-0123 (exp. 3/31/92)

Name of the Public Housing Agency (PHA) requesting housing assistance payments:

Application/Project No. (HUD use only)

Mailing Address of the PHA

Requested housing assistance payments are for :
How many Certificates? | How many Vouchers?

Signature of PHA Officer authorized to sign this application

X

Have you submitted prior applications: No Yes
. . . for Section 8 Certificates? ☐ ☐
. . . for Section 8 Housing Vouchers? ☐ ☐

Title of PHA Officer authorized to sign this application | Phone Number | Date of Application

Legal Area of Operation (area in which the PHA determines that it may legally enter into Contracts)

A. Primary Area(s) from which families to be assisted will be drawn.

Locality (City, Town, etc.)	County	Congressional District	Units

B. Proposed Assisted Dwelling Units

Housing Program	Number of Dwelling Units by Bedroom Count									Total Dwelling Units
	Elderly, Handicapped, Disabled			Non-Elderly						
	Efficiency	1-BR	2-BR	1-BR	2-BR	3-BR	4-BR	5-BR	6+BR	
Certificates										
Housing Vouchers										

C. Need for Housing Assistance. Demonstrate that the project requested in this application is consistent with the applicable Housing Assistance Plan including the goals for meeting the housing needs of Lower-Income Families or, in the absence of such a Plan, that the proposed project is responsive to the condition of the housing stock in the community and the housing assistance needs of Lower-Income Families (including the elderly, handicapped and disabled, large families and those displaced or to be displaced) residing in or expected to reside in the community. (If additional space is needed, add separate pages.)

D. Qualification as a Public Housing Agency. Demonstrate that the applicant qualifies as a Public Housing Agency and is legally qualified and authorized to carry out the project applied for in this application. (check √ the appropriate boxes)	Submitted with this application	Previously submitted
1. The relevant enabling legislation		
2. Any rules and regulations adopted or to be adopted by the agency to govern its operations		
3. A supporting opinion from the Public Housing Agency Counsel		

Retain this record for the term of the ACC.
Previous editions are obsolete

form HUD-52515 (7/88)
ref. handbook 7420.3

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E. Financial and Administrative Capability. Describe the experience of the PHA in administering housing or other programs and provide other information which evidences present or potential management capability for the proposed program.

F. Housing Quality Standards. Provide a statement that the Housing Quality Standards to be used in the operation of the program will be as set forth in the program regulation or that variations in the Acceptability Criteria are proposed. In the latter case, each proposed variation shall be specified and justified.

G. Leasing Schedule. Provide a proposed schedule specifying the number of units to be leased by the end of each three-month period.

H. Average Monthly Adjusted Income (Housing Vouchers Only)

Efficiency	1-BR	2-BR	3-BR	4-BR	5-BR	6+BR

I. Attachments. The following additional items must be submitted either with the application or after application approval, but no later than with the PHA executed ACC.

	Submitted with this application	To be submitted	Previously submitted
1. Equal Opportunity Housing Plan			
2. Equal Opportunity Certifications, Form HUD-916			
3. Estimates of Required Annual Contributions, Forms HUD-52672 and HUD-52673			
4. Administrative Plan			
5. Proposed Schedule of Allowances for Utilities and Other Services, Form HUD-52667, with a justification of the amounts proposed			

HUD Field Office Recommendations

Recommendation of Appropriate Reviewing Office	Signature and Title	Date

form HUD-52515

BILLING CODE 4210-33-C

Attachment 2—Certification Regarding Drug-Free Workplace Requirements (From 24 CFR Part 24, Appendix C)

Instructions for Certification

1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

2. The certification set out below is a material representation of fact upon which reliance was placed when the agency determined to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.

3. For grantees other than individuals, Alternate I applies.

4. For grantees who are individuals, Alternative II applies. Certification Regarding Drug-Free Workplace Requirements Alternate I.

A. The grantee certifies that it will provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing a drug-free awareness program to inform employees about—

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—

(1) Abide by the terms of the statement; and

(2) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;

(e) Notifying the agency within ten days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction;

(f) Taking one of the following actions, within 30 days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee shall insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Alternate II

The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance in conducting any activity with the grant.

Attachment 3—Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of Congress, or an employee of a member of congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form –LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontractors, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signed by: (Name, Title & Signature of Authorized PHA/IHA Official)

_____

(Name & Title)

_____

(Signature & Date)

BILLING CODE 4210-33-M

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

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Attachment 4

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change **For Material Change Only:** year _____ quarter _____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier _____, *if known*:	
Congressional District, *if known*:	**Congressional District**, *if known*:
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, *if applicable*: _____
8. Federal Action Number, *if known*:	9. Award Amount, *if known*: $
10. a. Name and Address of Lobbying Entity (*if individual, last name, first name, MI*):	b. Individuals Performing Services (*including address if different from No. 10a*) (*last name, first name, MI*):

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment (*check all that apply*):	13. Type of Payment (*check all that apply*):
$ _____ ☐ actual ☐ planned	☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____
12. Form of Payment (*check all that apply*): ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____	

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,800 for each such failure.

Signature: _____

Print Name: _____

Title: _____

Telephone No.: _____ **Date:** _____

Federal Use Only:

Authorized for Local Reproduction
Standard Form - LLL

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

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This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.

13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.

14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.

15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET

Approved by OMB
0348-0046

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Reporting Entity: _____ Page _____ of _____

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Standard Form - LLL-A

BILLING CODE 4210-33-C

TABLE 1.—FY 91 FAMILY SELF-SUFFICIENCY ALLOCATION FACTORS BY HUD OFFICE

HUD Office	Metro		Non-Metro		Composite	
	Units	Dollars	Units	Dollars	Units	Dollars
Boston, Massachusetts office	275	12,148,158	25	902,952	300	13,051,111
Hartford, Connecticut office	125	4,857,017	25	868,378	150	5,725,395
Manchester, New Hampshire office	50	1,812,095	75	2,275,288	125	4,087,383
Providence, Rhode Island office	50	1,692,639	0	0	50	1,692,639
Buffalo, New York office	200	5,456,408	75	1,946,114	275	7,402,522
New York, New York office	1,150	42,297,089	25	783,702	1175	43,080,791
Newark, New Jersey office	350	13,963,530	0	0	350	13,963,530
Baltimore, Maryland office	125	3,897,554	25	684,075	150	4,581,629
Charleston, West Virginia office	25	647,415	75	1,623,597	100	2,271,012
Philadelphia, Pennsylvania office	275	8,496,359	50	1,281,108	325	9,777,466
Pittsburgh, Pennsylvania office	125	3,151,512	50	1,254,824	175	4,406,335
Richmond, Virginia office	100	2,703,137	75	1,685,159	175	4,388,296
Washington, D C office	150	6,237,496	0	0	150	6,237,496
Atlanta, Georgia office	150	4,295,146	125	2,398,123	275	6,693,269
Birmingham, Alabama office	100	2,237,423	75	13,411,468	175	3,578,891
Columbia, South Carolina office	50	1,163,398	75	1,442,458	125	2,605,856
Greensboro, North Carolina office	125	2,985,631	150	3,129,184	275	6,114,815
Jackson, Mississippi office	25	619,034	125	2,364,085	150	2,983,119
Jacksonville, Florida office	350	10,382,211	50	1220,938	400	11,603,149
Louisville, Kentucky office	75	1,766,372	100	1,980,296	175	3,746,668
Knoxville, Tennessee office	50	1,138,492	25	472,463	75	1,610,955
Nashville, Tennessee office	75	1,906,704	50	951,058	125	2,857,762
Caribbean office	100	2,474,621	50	974,884	150	3,449,504
Chicago, Illinois office	425	14,708,207	100	2,316,123	525	17,024,330
Cincinnati, Ohio office	100	2,509,259	25	534,533	125	3,043,792
Cleveland, Ohio office	175	4,462,020	50	1,147,611	225	5,609,631
Columbus, Ohio office	75	1,855,318	50	1,074,635	125	2,929,953
Detroit, Michigan office	200	5,657,234	25	572,684	225	6,229,918
Grand Rapids, Michigan office	50	1,297,304	50	1,160,094	100	2,457,398
Indianapolis, Indiana office	125	3,211,752	75	1,599,585	200	4,811,337
Milwaukee, Wisconsin office	125	3,320,105	75	1,661,433	200	4,981,538
Minneapolis-St Paul Minn office	100	3,037,229	50	1,135,403		
				150	4,172,632	
Fort Worth, Texas office	200	5,427,245	125	2,606,226	325	8,033,471
Houston, Texas office	125	3,096,030	25	555,141	150	3,651,171
Little Rock, Arkansas office	25	585,709	75	1,387,525	100	1,973,234
New Orleans, Louisiana office	125	3,326,909	75	1,338,563	200	4,665,472
Oklahoma City, Oklahoma office	50	1,248,741	75	1,400,334	125	2,649,074
San Antonio, Texas office	125	3,375,786	50	1,011,900	175	4,387,686
Des Moines, Iowa office	50	1,348,597	75	1,680,547	125	3,029,145
Kansas City, Missouri office	100	2,488,327	75	1,486,999	175	3,975,326
Omaha, Nebraska office	25	622,342	50	1,033,939	75	1,656,281
St Louis, Missouri office	75	2,049,350	50	958,941	125	3,008,291
Denver, Colorado Regional office	150	3,957,710	150	3,724,503	300	7,682,213
Honolulu, Hawaii office	50	1,976,771	25	970,814	75	2,947,585
Los Angeles, California office	875	36,658,240	25	872,648	900	37,530,888
Phoenix, Arizona office	75	2,440,029	25	664,029	100	3,104,058
Sacramento, California office	75	2,254,630	25	749,429	100	3,004,060
San Francisco, California office	425	18,597,597	50	1,508,307	475	20,105,904
Anchorage, Alaska office	0	0	25	951,016	25	951,016
Portland, Oregon office	100	2,885,143	100	2,746,169	200	5,631,312
Seattle, Washington office	125	3,840,096	50	1,329,368	175	5,169,464

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Part IX

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting: Migratory Bird Hunting Regulations on Certain Federal Indian Reservations and Ceded Lands for the 1991-92 Late Season; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018-AB60

Migratory Bird Hunting: Migratory Bird Hunting Regulations on Certain Federal Indian Reservations and Ceded Lands for the 1991-92 Late Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule prescribes special late season migratory bird hunting regulations for certain tribes on Federal Indian reservations, off-reservation trust lands and ceded lands. This is in response to tribal requests for Service recognition of their authority to regulate hunting under established guidelines. This rule is necessary to allow establishment of season bag limits and, thus, harvest at levels compatible with populations and habitat conditions.

EFFECTIVE DATE: This rule takes effect on October 1, 1991.

ADDRESSES: Comments received on the tribal proposals and special hunting regulations are available for public inspection during normal business hours in room 634–Arlington Square Building, 4401 N. Fairfax Drive, Arlington, VA. Communications regarding the documents should be addressed to: Director (FWS/MBMO), U.S. Fish and Wildlife Service, room 634, Arlington Square, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Dr. Keith A. Morehouse, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, room 634–Arlington Square, Washington, DC 20240 (703/358–1773).

SUPPLEMENTARY INFORMATION: The Migratory Bird Treaty Act of July 3, 1918 (40 Stat. 755; 16 U.S.C. 703 *et seq.*), authorizes and directs the Secretary of the Interior, having due regard for the zones of temperatures and for the distribution, abundance, economic value, breeding habits, and times and lines of flight of migratory game birds, to determine when, to what extent, and by what means such birds or any part, nest or egg thereof may be taken, hunted, captured, killed, possessed, sold, purchased, shipped, carried, exported or transported.

In the August 14, 1991 **Federal Register** (56 FR 42097), the U.S. Fish and Wildlife Service (Service) proposed special migratory bird hunting regulations for the 1991–92 hunting season for certain Indian tribes, under the guidelines described in the June 4, 1985, **Federal Register** (50 FR 23467). The guidelines were developed in response to tribal requests for Service recognition of their reserved hunting rights, and for some tribes, recognition of their authority to regulate hunting by both tribal members and nonmembers on their reservations. The guidelines include possibilities for: (1) On-reservation hunting by both tribal members and nonmembers, with hunting by nontribal members on some reservations to take place within Federal frameworks but on dates different from those selected by the surrounding State(s); (2) on-reservation hunting by tribal members only, outside of usual Federal frameworks for season dates and length, and for daily bag and possession limits; and (3) off-reservation hunting by tribal members on ceded lands, outside of usual framework dates and season length, with some added flexibility in daily bag and possession limits. In all cases, the regulations established under the guidelines would have to be consistent with the March 10–September 1 closed season mandated by the 1916 Migratory Bird Treaty with Canada. Tribes that desired special hunting regulations in the 1991–92 hunting season were requested in the March 15, 1991, **Federal Register** (56 FR 11336) to submit a proposal that included details on: (1) Requested season dates and other regulations to be observed; (2) harvest anticipated under the requested regulations; (3) methods that will be employed to measure or monitor harvest; (4) steps that will be taken to limit level of harvest, where it could be shown that failure to limit such harvest would impact seriously on the migratory bird resources; and (5) tribal capabilities to establish and enforce migratory bird hunting regulations. No action is required if a tribe wishes to observe the hunting regulations that are established by the State(s) in which an Indian reservation is located. The guidelines have been used successfully since the 1985–86 hunting season, and they were made final beginning with the 1988–89 hunting season.

Although the August 14, 1991, proposed rule included generalized regulations for both early and late season hunting, this rulemaking addresses only the late season proposals. Early season hunting was addressed in the rulemaking published in the **Federal Register** on August 30, 1991 (56 FR 43542). As a general rule, early seasons begin during September each year and have a primary emphasis on such species as mourning and white-winged dove. Late seasons are those that begin October 1 or later each year and have a primary emphasis on waterfowl.

Also, in the August 14, 1991, proposed rule, the Service pointed out that duck hunting regulations likely would continue to be restrictive because of little overall improvement in duck population status from last year. Hunting regulations were restrictive last year for the same reason. Recently completed production surveys and the projected fall flight forecast indicate that the fall flight of ducks in 1991 will be unchanged from the low level of last year. Thus, the established frameworks are conservative and late season duck hunting regulations are restrictive again during the 1991–92 hunting season.

Comments and Issues Concerning Tribal Proposals

For the 1991–92 migratory bird hunting season, the Service received requests from 12 tribes and/or Indian groups that followed the June 4, 1985, guidelines and are appropriate for rulemaking. Some of the proposals submitted by the tribes have both early and late season elements. However, as noted earlier, only those with late season proposals are included in this final rulemaking; all 12 tribes have proposals with late seasons.

Comments and revised proposals received to date are addressed in the following section. Because of the brief public comment opportunity, it has been necessary to defer presentation of comments received to this late season rule.

Great Lakes Indian Fish and Wildlife Commission, Odanah, Wisconsin

As noted in the proposed and early season final rule, in a June 30, 1991, letter, the Wisconsin Department of Natural Resources (Department) voiced an overall nonobjection to the off-reservation regulations proposed by the Great Lakes Indian Fish and Wildlife Commission (GLIFWC) for hunting by Chippewa tribal members. With regard to the GLIFWC proposal, the Department had no objection at the time. However, the Department also reserved the right to modify its position pending further development of 1991 waterfowl production information.

In an August 1, 1991, letter to the Service, the GLIFWC further defined their proposed duck hunting regulations for the 1991–92 season, as they had stated an intention to do. The revised GLIFWC proposal differed from the original only in respect to bag limits, and left intact season dates given in the proposed rule. The change in daily bag limit provided for an additional mallard

drake and/or wood duck; the possession limit changed commensurately with these 2 but other species and sex restrictions remained the same.

The Service's early season final rule restated the GLIFWC explanation that the revisions are intended to provide a modest increase in the opportunity to realize a subsistence harvest. The effects of the revised proposal are anticipated to be minimal because: The harvest is said to be mainly dependent upon local birds that have not shown declines in population; the average number of birds harvested per trip by tribal hunters is less than one; and the small number of tribal waterfowl hunters and days spent afield effectively prohibits any biological impact. The GLIFWC anticipated that the increase in local harvest would be less than 100 birds. The GLIFWC also noted that off-reservation harvest has remained small, not exceeding 1500 birds annually since the first season in 1985.

In an August 27, 1991, letter to the GLIFWC, and copied to the Service, the Department responded to the modified proposal regarding an increased mallard bag limit, and also to the white-fronted goose season. The Department did not comment on the proposal for an increase of one wood duck in the bag. The Department, while acknowledging that State breeding mallards are at a 19-year high, questions the GLIFWC rationale for increasing the mallard bag limit because the ceded lands are in two northern survey areas that had a 12 percent decrease in breeding birds when compared to 1990. The Department also reviewed the State situation and stated a concern that, although it is unknown if tribal hunters depend more upon locally breeding mallards than nontribal hunters, hen mallards may still be flightless and more vulnerable to taking in mid-September. The Department feels that added harvest of this segment of the population could exacerbate the record low population numbers situation with mallards in other areas in recent years, as reflected by Service figures for survey areas. The Department also observed that the Service, in setting duck bag limits, has not recognized the differences in harvest derivation; the State prefers that the GLIFWC observe the same bag limit offered the State.

The Department believed the proposed goose seasons to be reasonable, except that for white-fronted geese. At issue is the 77-day season for white-fronted geese that exceeds the 70-day final Federal framework approved for the States. The Department cited a similar 1991 request for an extended white-fronted goose season by the State that the Service denied.

The GLIFWC responded to the Department in a letter copied to the Service dated September 13, 1991, reiterating that there is little doubt that tribal harvest of mallards is more dependent on local than on transient birds, because of the earliness of the season. The GLIFWC acknowledged the reported decrease in mallard breeding population numbers in the Northern High region of the State but added that confidence intervals for these subareas are so large as to make their use limited. The GLIFWC also assured the State that the additional mallard in the bag must be a drake so the fear for added harvest on the hen segment of the population is not justified. The GLIFWC also rebutted the Department's statement regarding the nonobservance by the Service of the derivation of harvest when setting regulations, noted above, and also the Department's comments concerning the length of the white-fronted goose season.

The Service believes that the issue has been adequately explored by the Department and the GLIFWC, and believes there is ample reason to believe that an additional drake mallard in the tribal daily bag limit is not likely to impact the State's breeding population of mallards to any great degree under present conditions. Nevertheless, the Service reiterates the charge to the GLIFWC to be sensitive to the potential need to reduce bag limits on mallards and/or wood ducks in the future if indicated by declining population numbers.

With regard to the charge made by the Department that the Service does not recognize differences in harvest derivation when setting flyway regulations, it is believed that this was meant to apply strictly to within flyway regulations. If so, this is largely true. That is, the Service does not usually consider local abundance when setting flyway-by-flyway bag limits. However, as presented, the Service agrees with the GLIFWC that the statement is overly broad for the reasons given by the GLIFWC, i.e., that the flyways themselves are proof of a recognition of differences in derivation and also early seasons sometimes provided for certain species. It is true also that recent severe restrictions in bag limits are manifestations of a recognition that the abundance and harvest of ducks in the flyways is to some extent affected by local breeding conditions in the prairie pothole country of Canada and the U.S.

Generally, the Service believes the revised GLIFWC proposal to be reasonable given the request and the justification provided to support it. The GLIFWC request falls within the limits of the guidelines established by the Service for approving tribal migratory bird hunting regulations. As such, while there may be some justification for reducing or not approving increase in bag limits in the future, there appears to be no good reason to not approve the GLIFWC proposal for the 1991–92 hunting year.

Crow Creek Sioux Tribe, Crow Creek Indian Reservation, Fort Thompson, South Dakota, and the Yankton Sioux Tribe, Marty, South Dakota

In an August 22, 1991, letter to the Service, the State of South Dakota, Department of Game, Fish and Parks, responded to the proposals for these 2 tribes. For the Crow Creek Tribe, the State observed that the duck season, which is scheduled to start and close a week later than the State season, is apt to be a complication for the average hunter but said the effect would be minimal as long as hunting is confined to trust lands. The State made the same general comments on the tribal goose season.

With regard to the Yankton Sioux Tribe, the State observed that a pending agreement with the tribe would state that season and bag limits established would be the same as the State's, except for the extended goose season in the Chalk Rock Colony area. Tribal regulations for the duck season will be split into a Low Plains South Zone and a Low Plains Middle Zone.

For both tribes, the State was mainly concerned with documentation of the harvest and receiving copies of harvest survey results, and also obtaining copies of the materials and methods for conducting the surveys. The Service is sensitive to the State's position that documenting harvest is an integral part of satisfying the guidelines for approving supplemental seasons. The tribes recently advised the Service that they would institute new measures, in the form of waterfowl harvest reports for individual hunters and weekly warden contact reports, to ensure adequate harvest documentation for reporting to the Service when requesting special migratory bird hunting regulations. In the future, the Service, will provide tribal harvest information to the South Dakota Department of Game, Fish and Parks on an as-requested basis.

It should be pointed out that the Service deals with the tribes on a government-to-government basis. The tribes are not represented on the Flyway Councils. Migratory bird harvest by

tribal members is generally insignificant, in terms of numbers. However, the tribes can and often do cooperate fully with the States in regulations established on reservation and other lands. The Service encourages the States and the tribes to cooperate with each other, and with the Service, to establish harvest regulations that are in the best interests of the migratory bird resource. The Service utilizes established guidelines for determining the reasonableness of tribal regulations requests given waterfowl populations conditions in any given hunting year.

In summary, this rule amends § 20.110 of 50 CFR to make current for the late 1990–91 migratory bird hunting season the regulations that will apply on Federal Indian reservations, off-reservation trust lands and ceded lands. These regulations take into account the need to continue the reduced harvest of ducks.

Administrative Actions NEPA Consideration

Pursuant to the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(C)), the "Final Environmental Statement for the Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FES–75–74)" was filed with the Council on Environmental Quality on June 6, 1975, and notice of availability was published in the **Federal Register** on June 13, 1975 (40 FR 25241). A supplement to the final environmental statement, the "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (SEIS 88–14)" was filed on June 9, 1988, and a notice of availability was published in the **Federal Register** on June 16, 1988 (53 FR 22582), and June 17, 1988 (53 FR 22727). In addition, an August 1985 environmental assessment titled "Guidelines for Migratory Bird Hunting Regulations on Federal Indian Reservations and Ceded Lands" is available from the Service.

Nontoxic Shot Regulations

On May 13, 1991 (56 FR 22100), the Service published the final rulemaking on nontoxic shot zoning for the current hunting season and future years. This rule, titled "Nationwide Requirement to Use Nontoxic Shot for the Taking of Waterfowl, Coots and Certain Other Species Beginning in the 1991–92 Season," provides that all of the waterfowl harvest beginning this year will occur in nontoxic shot zones. This final rule also reminded hunters that nontoxic shot use is required in all U.S. offshore territorial waters and for the taking of captive-reared mallards on shooting preserves, in field trials and for bona fide dog training activities. All of the final hunting regulations covered by this rulemaking are in compliance with the Service's nontoxic shot requirements.

Endangered Species Act Consideration

Section 7 of the endangered Species Act provides that, "The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act" (and) shall "insure that any action authorized, funded or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat * * *." Consequently, the Service initiated section 7 consultation under the Endangered Species Act for the 1991–92 migratory bird hunting season regulations.

In a July 31, 1991, biological opinion, the Division of Endangered Species advised the Office of Migratory Bird Management of its conclusions that the proposed action will not affect either listed species or critical habitat. The Service's biological opinions resulting from its consultation under section 7 of the Endangered Species Act may be inspected by the public in either the Division of Endangered Species or the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, VA, or write Director (MBMO), U.S. Fish and Wildlife Service, 634 ARLSQ, Main Interior Building, Washington, DC 20240.

Regulatory Flexibility Act, Executive Orders 12291, 12612, and 12630 and the Paperwork Reduction Act

In the March 6, 1991 **Federal Register** (56 FR 9462), the Service reported measures it had undertaken to comply with requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) and Executive Order 12291, "Federal Regulation," of February 17, 1981. These included preparing a Determination of Effects and revising the Final Regulatory Impact Analysis, and publication of a summary of the latter. These regulations have been determined to be major under Executive Order 12291, and they have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act. It has been determined that this rule will not involve the taking of any property rights, as defined in Executive Order 12630, and will not have any significant federalism effects, under Executive Order 12612. These determinations are detailed in the aforementioned documents which are available on request from the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, room 634-Arlington Square, Washington, DC 20240. These regulations contain no collection of information subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980.

Memorandum of Law

The Service's Memorandum of Law, required by section 4 of Executive Order 12291, was published in the **Federal Register** on August 21, 1991 (56 FR 41608).

Authorship

The primary author of this final rule is Dr. Keith A. Morehouse, Office of Migratory Bird Management, working under the direction of Thomas J. Dwyer, Chief.

Regulations Promulgation

The rulemaking process for migratory bird hunting must, by its nature, operate under severe time constraints. However, the Service is of the view that every attempt should be made to give the public the greatest possible opportunity to comment on the regulations. Thus, when the proposed hunting regulations for certain tribes were published on August 14, 1991, the Service established the longest possible period for public comments. In doing this, the Service recognized that time would be of the essence. However, the comment period provided the maximum amount of time possible while ensuring that a final rule would be published before the beginning of the late hunting season beginning on October 1, 1991.

Under the authority of the Migratory Bird Treaty Act of July 3, 1918, as amended (40 Stat. 755; 16 U.S.C. 703 *et seq.*), the Service prescribes final hunting regulations for certain tribes on Federal Indian reservations (including off-reservation trust lands), and ceded lands. The regulations specify the species to be hunted and establish season dates, bag and possession limits, season length, and shooting hours for migratory game birds other than waterfowl.

Therefore, for the reasons set out above, the Service finds that "good cause" exists, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act, and this final rule will take effect on October 1, 1991.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Transportation, Wildlife.

Accordingly, part 20, subchapter B, chapter I of title 50 of the Code of Federal Regulations is amended as follows:

PART 20—[AMENDED]

1. The authority citation for part 20 continues to read as follows:

Authority: Migratory Bird Treaty Act, sec. 3, Pub. L. 65–186; 40 Stat. 755 (16 U.S.C. 701–708h) sec. 3(h), Pub. L. 95–616; 92 Stat. 3112 (16 U.S.C. 712).

(**Note:** The following annual hunting regulations provided for by § 20.110 of 50 CFR part 20 will not appear in the Code of Federal Regulations because of their seasonal nature).

2. Section 20.110 is revised to read as follows:

§ 20.110 Seasons, limits and other regulations for certain Federal Indian reservations, Indian Territory, and ceded lands.

(a) Colorado River Indian Reservation, Parker, Arizona (Tribal Members and Nonmembers)

Ducks

Season Dates: Begin October 11, end October 20, 1991; then begin November 18, 1991, end January 5, 1992.

Daily Bag and Possession Limits: The daily bag limit is 4, and the possession limit is 8.

Coots

Season Dates: Begin October 12, 1991, end January 5, 1992.

Daily Bag and Possession Limits: The daily bag limit is 25, and the possession limit is limited to the daily bag (25).

Geese

Canada Geese

Season Dates: Begin October 25, 1991, end January 19, 1992.

Daily Bag and Possession Limits: The daily bag limit is 2, and the possession limit is 4.

White-fronted Geese: The 1991–92 season for this species is closed.

White Geese

Season Dates: Begin October 25, 1991, end January 19, 1992.

Daily Bag and Possession Limits: The daily bag limit is 3, and the possession limit is 6.

Mourning Doves

Season Dates: Begin November 17, end December 31, 1991.

Daily Bag and Possession Limits: The daily bag limit is 10, and the possession limit is 20.

General Conditions: Tribal and nontribal hunters will comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20, regarding shooting hours and manner of taking. A valid Colorado River Indian Reservation Hunting Permit is required before the taking of wildlife and to be in possession while hunting. Any person transporting game birds off the Colorado River Indian Reservation must have a valid transport declaration form. Forms can be obtained at the Fish and Game Office or the Security Station. Other special regulations established by the Colorado River Indian Tribes also apply on the reservation.

(b) Crow Creek Sioux Tribe, Crow Creek Indian Reservation, Fort Thompson, South Dakota (Tribal Members and Nonmembers)

Ducks

Season Dates: Begin October 19, end November 30, 1991.

Daily Bag and Possession Limits: The daily bag limit is 3, and the possession limit is 6.

Dark Geese

Canada

Season Dates: Begin October 12, 1991, end January 5, 1992.

Daily Bag and Possession Limits: For that portion of the season prior to November 17, the daily bag and possession limits are 1 and 2, respectively; beginning on November 17 and for the remainder of the season the daily bag and possession limits are 2 and 4, respectively.

White-fronted Geese

Season Dates: Begin October 12, 1991, end January 5, 1992.

Daily Bag and Possession Limits: The daily bag limit is 1, and the possession limit is 2.

Light Geese

Season Dates: Begin October 12, 1991, end January 5, 1992.

Daily Bag and Possession Limits: The daily bag limit is 7, and the possession limit is 14.

General Conditions: The waterfowl hunting regulations established by this final rule apply only to tribal and trust lands within the external boundaries of the reservation. Tribal and nontribal hunters will comply with basic Federal migratory bird hunting regulations in 50 CFR part 20 regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or over must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the face. Special regulations established by the Crow Creek Sioux Tribe also apply on the reservation.

(c) Great Lakes Indian Fish and Wildlife Commission, Odanah, Wisconsin (Tribal Members Only)

Ducks

Michigan, 1842 Treaty Zone:

Season Dates: Begin October 5, end November 3, 1991.

Daily Bag Limit: The daily bag limit is 3.

Michigan, 1836 Treaty Zone

Season Dates: North Zone, begin October 5 and end November 3, 1991; Middle Zone, begin October 12 and end November 10; South Zone, begin October 19 and end November 14, 1991, then begin November 29 and end December 1, 1991.

Daily Bag Limit: The daily bag limit is 3.

Mergansers

Michigan, 1842 Treaty Zone:

Season Dates: Begin October 5, end November 3, 1991.

Daily Bag Limit: The daily bag limit is 5, including no more than 1 hooded merganser.

Michigan, 1836 Treaty Zone

Season Dates: North Zone, begin October 5, end November 3; Middle Zone, begin October 12, end November 10; South Zone, begin October 19, end November 14, and then begin November 29, end December 1, 1991.

Daily Bag Limit: The daily bag limit is 5, including no more than 1 hooded merganser.

Canada Geese

Michigan, 1842 Treaty Zone:

Season Dates: Same season dates and length selected by the State of Michigan for each zone in this area.

Daily Bag Limit: The daily bag limit is 5.

Michigan, 1836 Treaty Zone:

Season Dates: Same season dates and length selected by the State of Michigan for each zone in this area.

Daily Bag Limit: The daily bag limit is 2 or 3, depending upon the State hunting zone in which the Treaty Zone is located; see State/tribal regulations.

Other Geese (Blue, Snow, and White-fronted)

Michigan, 1842 Treaty Zone:

Season Dates: Same season dates and length selected by the State of Michigan for each zone in this area.

Daily Bag Limit: The daily bag limit is 7 minus the number of Canada geese taken, including no more than 2 white-fronted.

Michigan, 1836 Treaty Zone:

Season Dates: Same season dates and length selected by the State of Michigan for each zone in this area.

Daily Bag Limit: The daily bag limit is 7 minus the number of Canada geese taken, including no more than 2 white-fronted.

Coots and Common Moorhens (Gallinule)

Michigan, 1842 Treaty Zone:

Season Dates: North Zone, begin October 5, end November 3; Middle Zone, begin October 12, end November 10; South Zone, begin October 19, end November 14, then begin November 29, end December 1, 1991.

Daily Bag Limit: The daily bag limit is 20, singly or in the aggregate.

Michigan, 1836 Treaty Zone:

Season Dates: North Zone, begin October 5, end November 3; Middle Zone, begin October 12, end November 10; South Zone, begin October 19, end November 14, then begin November 29, end December 1, 1991.

Daily Bag Limit: The daily bag limit is 15.

General Conditions: (i) While hunting waterfowl, a tribal member must carry on his/her person a valid tribal waterfowl hunting permit.

(ii) Except as otherwise noted, tribal members will be required to comply with tribal codes that will be no less restrictive than the provisions of chapter 10 of the Model Off-Reservation Code. This Model Code was the subject of the stipulation in *Lac Courte Orielles* v. *State of Wisconsin* regarding migratory bird hunting. Except as modified by the Service rules adopted in response to this proposal, these amended regulations parallel Federal requirements, 50 CFR part 20, and shooting hour regulations in 50 CFR part 20, subpart K, as to hunting methods, transportation, sale, exportation and other conditions generally applicable to migratory bird hunting.

(iii) Tribal members in each zone will comply with State regulations providing for closed and restricted waterfowl hunting areas.

(iv) Minnesota and Michigan—Duck Blinds and Decoys. Tribal members hunting in Minnesota will comply with tribal codes that contain provisions parallel to M. S. 100.29, Subd. 18 (duck blinds and decoys). Tribal members hunting in Michigan will comply with tribal codes that contain provisions parallel to Michigan law regarding duck blinds and decoys.

(v) Possession limits for each species are double the daily bag limit, except on the opening day of the season, when the possession limit equals the daily bag limit, unless otherwise specified.

(vi) Possession limits are applicable only to transportation and do not include birds which are cleaned, dressed, and at a member's primary residence. For purposes of enforcing bag and possession limits, all migratory birds in the possession or custody of tribal members on ceded lands will be considered to have been taken on those lands unless tagged by a tribal or State conservation warden as having been taken on-reservation. In Wisconsin, such tagging will comply with Sec. NR 19.12, Wis. Adm. Code. All migratory birds which fall on reservation lands will not count as part of an off-reservation bag or possession limit.

(d) Jicarilla Apache Tribe, Jicarilla Indian Reservation, Dulce, New Mexico (Tribal Members and Nonmembers)

Ducks, (Including Mergansers)

Season Dates: Begin October 5, end November 30, 1991.

Daily Bag and Possession Limits: The daily bag limit is 4, and the possession limit is 8. No canvasbacks are allowed in the bag.

Geese: The 1991–92 goose season is closed.

General Conditions: Tribal and nontribal hunters will comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20 regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or older must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) singed in ink across the face. Special regulations established by the Jicarilla Tribe also apply on the reservation.

(e) Navajo Indian Reservation, Window Rock, Arizona (Tribal Members and Nonmembers)

Ducks

Season Dates: Begin October 5, end December 1, 1991.

Daily Bag and Possession Limits: The bag limit is 4. Of this number: No more than 1 may be a pintail; no more than 2 may be canvasbacks or 2 may be redheads, or one of each of these species; and may include up to 3 mallards, only one of which may be a female. The possession limit is twice the daily bag limit for each species.

Canada Geese

Season Dates: Begin December 14, 1991, end January 5, 1992.

Daily Bag and Possession Limits: The bag limit is 2, and the possession limit is restricted to the daily bag (2).

Coots and Common Moorhens

Season Dates: Begin October 5, end December 1, 1991.

Daily Bag and Possession Limits: The daily bag limit is 25 singly or in the aggregate, and the possession limit is restricted to the daily bag limit (25).

General Conditions: Tribal and nontribal hunters will comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20, regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or over must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (duck stamp) signed in ink across the face. Special regulations established by the Navajo Nation also apply on the reservation.

(f) Oneida Tribe of Indians of Wisconsin, Oneida, Wisconsin (Tribal Members)

Duck

Season Dates: Begin October 5, end October 13, 1991; begin October 19, end November 8, 1991.

Daily Bag and Possession Limits: The daily bag limit is 3, and the possession limit is 8.

General Conditions: Tribal members are required to have their tribal Identification Card and Sportsman License on their person while hunting on the reservation. Other regulations are enforced by the Oneida Conservation Department within the original reservation boundaries.

(g) Penobscot Indian Nation, Old Town, Maine (Tribal Members and Non-Tribal Hunters)

Ducks

Season Dates: Begin October 7, end October 26, 1991; begin November 7, end November 16, 1991.

Daily Bag and Possession Limits: The daily bag limit is 3, and the possession limit is 6.

Geese

Canada:

Season Dates: Begin October 1, end December 9, 1991.

Daily Bag and Possession Limits: The daily bag limit is 3, and the possession limit is 6.

White:

Season Dates: Begin October 1, 1991, end January 15, 1992.

Daily Bag and Possession Limits: The daily bag limit is 5, and the possession limit is 10.

General Conditions: (i) When the sustenance and Maine's general waterfowl season overlap, the daily bag limit for tribal members is the smaller of the two daily bag limits.

(ii) Tribal members shall comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20, except that when sustenance hunting tribal members shall be permitted to hunt one-half hour before sunrise to one-half hour after sunset.

(iii) Each tribal waterfowl hunter 16 years of age or over must possess and carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp), signed in ink across the face.

(iv) Special regulations established by the Penobscot Indian Nation also apply in Penobscot Indian Territory.

(h) Confederated Salish and Kootenai Tribes, Flathead Indian Reservation, Pablo, Montana (Nontribal Members)

Ducks (Including Mergansers)

Season Dates: Begin October 5, end October 20; begin November 5, end December 1, 1991; and begin December 14, end December 29, 1991.

Daily Bag and Possession Limits: The daily bag limit is 4, and the possession limit is 8.

Coots

Season Dates: Begin October 5, end October 20; begin November 5, end December 1, 1991; and begin December 14, end December 29, 1991.

Daily Bag and Possession Limits: The daily bag limit is 25, and the possession limit is limited to the daily bag (25).

Geese:

Dark:

Season Dates: Begin September 28, end December 29, 1991.

Daily Bag and Possession Limits: The daily bag limit is 2, and the possession limit is 4.

White:

Season Dates: Begin September 28, end December 29, 1991.

Daily Bag and Possession Limits: The daily bag limit is 3, and the possession limit is 6.

Special Exception For Geese: A special early closure for goose hunting may begin at sunset, December 1, 1991, within the following area or some portion therein: Beginning at Polson, thence north along U.S. Highway 93 to Irvine Flats Road, thence west along Irvine Flats Road to Irvine Divide, thence south along the Salish Mountains Divide to its intersection with the Ronan-Hot Springs Road, thence east to Sloan's Bridge along Sloan Road to its intersection with Round Butte Road, thence east along Round Butte Road to Valley View Road, thence north along Valley View Road to its intersection with Kerr Dam Road, thence north and east to Polson, the point of beginning. Lands outside those boundaries will close to Canada goose hunting at sunset on December 29, 1991.

General Conditions. (i) Nontribal hunters will comply with all basic Federal migratory bird hunting regulations contained in 50 CFR part 20 regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or older must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the face. Special regulations established by the Confederated Salish and Kootenai Tribes also apply on the reservation.

(ii) Regulations require that the maximum number of geese in the daily bag and possession limits be restricted to six (6) birds.

(i) Shoshone-Bannock Tribes, Fort Hall Indian Reservation, Fort Hall, Idaho (Nontribal Members)

Ducks

Season Dates: Begin October 26, end December 23, 1991.

Daily Bag and Possession Limits: The daily bag limit is 4, and the possession limit is 8.

Mergansers

Season Dates: Begin October 26, end December 23, 1991.

Daily Bag and Possession Limits: The daily bag limit is 5, and the possession limit is 10.

Coots

Season Dates: Begin October 26, end December 23, 1991.

Daily Bag and Possession Limits: The daily bag limit is 10, and the possession limit is 20.

Geese

Season Dates: Begin October 12, 1991 end January 12, 1992.

Daily Bag and Possession Limits: The bag limit is 3 in the aggregate of all species, and the possession limit is 6.

Common Snipe

Season Dates: Begin October 26, end December 23, 1991.

Daily Bag and Possession Limits: The daily bag limit is 8, and the possession limit is 16.

General Conditions: Nontribal hunters will comply with all basic Federal migratory bird hunting regulations in 50 CFR Part 20 regarding shooting hours and manner of taking. In addition, each water fowl hunter 16 years of age or older must have in his/her possession a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the face. Other regulations established by the Shoshone-Bannock Tribes also apply on the reservation.

(j) Tulalip Tribes of Washington, Tulalip Indian Reservation, Marysville, Washington (Non-Tribal Hunters)

Ducks

Season Dates: Begin October 12, end October 20, 1991; then begin November 17, 1991, end January 5, 1992.

Daily Bag and Possession Limits: The daily bag limit is 4, and the possession limit is 8.

Coots

Season Dates: Begin October 12, end October 20, 1991; then begin November 17, 1991, end January 5, 1992.

Daily Bag and Possession Limits: The daily bag limit is 25, and the possession limit is restricted to a daily bag limit (25).

Geese

Season Dates: Begin October 19, 1991, end January 19, 1992.

Daily Bag and Possession Limits: The daily bag limit is 3, and the possession limit is 6.

Brant

Season Dates: Begin December 7, end December 22, 1991.

Daily Bag and Possession Limits: The daily bag limit is 2, and the possession limit is 4.

Snipe

Season Dates: Begin October 12, end October 20, 1991; then begin November 17, 1991, end January 5, 1992.

Daily Bag and Possession Limits: The daily bag limit is 6, and the possession limit is 12.

General Conditions: All hunters are required to adhere to shooting hour regulations of one-half hour before sunrise to sunset, and a number of other special regulations enforced by the tribes.

(k) Fort Apache Indian Reservation, Whiteriver, Arizona (Tribal Members and Nonmembers)

Ducks, (Including Mergansers)

Season Dates: Open November 9, 1991, close January 5, 1992.

Daily Bag and Possession Limits: The daily bag limit is 6, of which: no more

than 2 may be redheads or 2 may be canvasbacks (or 1 of each); no more than 1 of which may be pintail; and no more than 3 of which may be mallards, including no more than 1 hen mallard. The possession limit is twice the daily bag limit, but may not include more than 1 daily bag limit that has been taken in any 1 day.

Coots, Moorhens and Gallinules

Season Dates: Open November 9, 1991, close January 5, 1992.

Daily Bag and Possession Limits: The daily bag limit is 25, singly or in the aggregate. The possession limit is twice the daily bag limit, but may not include more than 1 daily bag limit that has been taken in any 1 day.

Canada Geese

Season Dates: Open November 16, 1991, close January 5, 1992.

Bag and Possession Limits: The daily bag limit is 2, and the possession limit is 4 after the first day.

General Conditions: (i) The area open to hunting in the above seasons consists of: The entire length of the Black and Salt Rivers forming the southern boundary of the reservation; the Whiteriver, extending from the Canyon Day Stockman Station to the Salt River; and all stock ponds located within Wildlife Management Units 4, 6 and 7. The remaining reservation waters will be closed to waterfowl hunting during the 1991–92 hunting season.

(ii) Tribal and nontribal hunters will comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20 regarding shooting hours and manner of taking.

(iii) See other special regulations established by the White Mountain Apache Tribe that apply on the reservation, available from the reservation Game and Fish Department.

(l) Yankton Sioux Tribe, Marty, South Dakota (Tribal Members and Nonmembers)

Ducks, including Mergansers

Season Dates: Low Plains South Zone, begin October 26, end December 3, 1991; Low Plains Middle Zone, begin October 12, end November 19, 1991.

Daily Bag and Possession Limits: The daily bag limit is 3, and the possession limit is 6.

Coots

Season Dates: Low Plains South Zone, begin October 26, end December 3, 1991; Low Plains Middle Zone, begin October 12, end November 19, 1991.

Daily Bag and Possession Limits: The daily bag limit is 15, and the possession limit is 30.

Swans: The swan season and bag limits are in accordance with those set by the State of South Dakota, for both tribal and nontribal hunters.

Canada Geese (Nontribal)

Season Dates: Begin October 5, end December 22, 1991.

Daily Bag and Possession Limits: The daily bag limit is 1 from October 5 through November 8, and 2 from November 9 through December 22. The possession limits are twice the daily bag limits for each hunting period given above.

White-fronted Geese (Nontribal)

Season Dates: Begin October 5, end December 22, 1991.

Daily Bag and Possession Limits: The daily bag limit is 1, and the possession limit is 2.

Canada and White-Fronted Geese (Tribal)

Season Dates: Begin October 19, 1991, end January 12, 1992.

Daily Bag and Possession Limits: The daily bag limit is 1 Canada goose and 1 white-fronted goose from October 19 through November 15, 1991. The daily bag limit from November 16, 1991, through January 12, 1992, is either 2 Canada geese or 1 Canada goose and 1 white fronted goose. The possession limits are twice the daily bag limits.

White Geese (Nontribal)

Season Dates: Begin October 5, end December 22, 1991.

Daily Bag and Possession Limits: The daily bag limit is 7, and the possession limit is 14.

White Geese (Tribal)

Season Dates: Open October 19, 1991, close January 12, 1992.

Daily Bag and Possession Limits: The daily bag limit is 5, and the possession limit is 10.

General Conditions: (i) For tribal and nontribal hunters, a special extended goose season will be held in the Chalk Rock Colony area of the Yankton Sioux Reservation. This season begins at the close of the regular goose season, December 23, 1991, in Goose Hunting Unit 2 and extends through January 12, 1992. Information on this special season, including bag limits and other regulations, may be obtained from the Bureau of Indian Affairs Office in Wagner, South Dakota.

(ii) The waterfowl hunting regulations established by this final rule apply to tribal and trust lands within the external boundaries of the reservation. Tribal and nontribal hunters will comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20 regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or older must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the face. Special regulations established by the Yankton Sioux Tribe also apply on the reservation.

Dated: September 25, 1991.

Richard N. Smith,

Director, Fish and Wildlife Service.

[FR Doc. 91–23523 Filed 9–30–91; 8:45 am]

BILLING CODE 4310–55–M

federal register

Monday
September 30, 1991

Part X

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Listing the Teralingua Creek Cat's-Eye, Texas Trailing Phlox, Na Pali Beach Hedyotis, and Ma'oli'oli; Final Rules

DEPARTMENT OF THE INTERIOR

50 CFR Part 17

RIN 1018-AB38

Endangered and Threatened Wildlife and Plants; Final Rule To List the Plant Cryptantha crassipes (Terlingua Creek Cat's-eye) as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service (Service) determines the plant *Cryptantha crassipes* (Terlingua Creek cat's-eye), to be an endangered species under the authority of the Endangered Species Act of 1973 (Act), as amended. This plant is known from six sites in Brewster County, Texas. The 6 populations consist of less than 3,800 plants. The plants are impacted by road construction, cattle trampling, and off-road vehicle (ORV) use. This action will implement Federal protection provided by the Act for Terlingua Creek cat's-eye. Critical habitat is not being designated.

EFFECTIVE DATE: October 30, 1991.

ADDRESSES: The complete file for this rule will be available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Ecological Services Field Office, Corpus Christi State University, 6300 Ocean Drive, Corpus Christi, Texas 78412.

FOR FURTHER INFORMATION CONTACT: Philip Clayton, at the above address (512/888-3346 or FTS 529-3346).

SUPPLEMENTARY INFORMATION:

Background

Cryptantha crassipes is a narrow endemic that occurs in Brewster County, Texas. The species grows on xeric, gypsiferous, chalky shales on low, rounded hills and gently slopes in the Trans-Pecos shrub savannah. The climate is arid, with late summer rains. The plants grow in full sunlight and receive additional heat from the soil substrate (Poole 1987). The plants occur between 960 and 1,010 meters (3,150 and 3,320 feet). in elevation and are a component of an edaphic climax community (Poole 1987). Associated species include *Eriogonum havardii* (Havard buckwheat), *Euphorbia perennans* (perennial spurge), *acacia schottii* (Schott acacia), *Anulocaulis leiosolenus* (gypsum ringstem), *Ephedra* sp. (Mormon tea), *Larrea tridentata* (creosote), *Chrysactinia mexicana* (damianita), *Dalea formosa* (feather dalea), *Krameria glandulosa* (range ratany), and *Tiquilia hispidissima.*

Cryptantha crassipes is a perennial growing up to two feet tall, silvery overall, with a dense mound of leaves at the plant's base. The stems are slender, erect, hairy, and bristly. Leaves are narrow and whitish with hairs and bristles; at the plant's base, leaves are up to 8 centimeters (cm) (3 inches) long and to 0.64 cm (0.25 inch) wide. There are several stem leaves that become narrow at the apex. The flower cluster is terminal and 2.5 cm (1 inch) in diameter. The flowers are white, with yellow knobs rising above the laid-back white petals. The hairy fruit consists of four egg-shaped nutlets. Flowering occurs from late March to early June, and fruiting occurs from April to July (Poole 1987).

Six populations are presently known, all on private land in Brewster County, Texas. All populations appeared to be healthy and vigorous in 1987 (Poole 1987). The six known populations consist of less than one hundred to a few thousand plants scattered over sites of up to 175 acres in size. Among these populations, there is a total of about 3,754 individuals. All individuals observed have been mature. No seedlings or juveniles have been seen. Although the presence of immature fruits and/or flowers was documented in the 1987 status report, no seed dispersal was observed. The population biology of the species is unknown (Poole 1987).

Cryptantha crassipes was first discovered by V.L. Cory in the late 1930's in Brewster County, Texas. I.M. Johnston described the species in 1939. The species has been collected infrequently. No other historical occurrences are known (Poole 1987).

Federal government actions on this species began with Section 12 of the Act of 1973 (16 U.S.C. 1531 *et seq.*), which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94-51, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice (40 FR 27823) that formally accepted the Smithsonian report as a petition within the context of Section 4(c)(2), now Section 4(b)(3)(A), of the Act and of its intention thereby to review the status of those plants. *Cryptantha crassipes* was included as "threatened" in the July 1, 1975, petition.

On December 15, 1980, the Service published a revised notice of review for native plants in the **Federal Register** (45 FR 82480); *C. crassipes* was included in that notice as a Category 2 species, which means that information indicates that proposing to list the species as endangered or threatened is possibly appropriate, but conclusive data on biological vulnerability and threats are not currently available to support a proposed rule. The 1985 plant notice of review (50 FR 39526) maintained *C. crassipes* in Category 2. The 1990 plant notice of review (55 FR 6197) lists it in Category 1, which means the Service currently has substantial biological information to support a proposed rule to list as endangered or threatened. A proposed rule to list this species as endangered was published on April 13 1990 (55 FR 13919).

Summary of Comments and Recommendations

In the April 13, 1990, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate state agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice was published in the Alpine Avalanche on May 17, 1990.

One comment was received from the Director of the Property Owners Association of a ranch where some of the identified populations of the species occurs, and is discussed below:

Issue 1: The commenter stated that road construction, cattle grazing, and ORV use are not occurring on the ranch at present. Response: The Service evaluates past, present, and future threats to the species when determining to list a species as endangered or threatened. According to the status report on *C. crassipes* (Poole 1987), road construction, cattle grazing, and ORV use have had negative impacts on this species in the past, and may constitute future threats. Although road construction, cattle grazing, and ORV use are not occurring on the ranch at present, they may be occurring at other locations where the species exists. The small population numbers, limited distribution, and lack of protection are additional threats to this species. Recent information (Poole, Texas Parks and Wildlife Department, pers. comm., 1990) indicates that *C. crassipes* also occurs on private tracts of land adjacent to the ranch. Apparently these tracts are unfenced and some grazing is occurring.

Issue 2: The commenter suggested that many areas on the ranch appear to be suitable for *C. crassipes*. He suggested that the Service conduct additional surveys for the plant on the ranch and on Big Bend National Park (Park). Response: Because this species is only

found in sites with specific geological characteristics, any other likely locations must have identical geology. Poole (pers. comm., 1990) has looked at the ranch and 95 percent of it is not the right habitat for *C. crassipes*. However, the six known localities all occur within a 4-mile radius. No other extirpated or historical occurrences are known. Poole looked for suitable habitat within the Park but did not find any. The Park does not have a specimen in the herbarium. No historical occurrences are known from the Park. Because of the habitat specificity of *C. crassipes*, it is highly unlikely that the species occurs in the Park (Poole 1987).

Issue 3: The commenter believes that the proposed rule is premature, arbitrary, and is not based on current or comprehensive data. Response: A status report was completed on this species by Poole (1987). The available scientific and commercial information in the status report fully supports listing of *C. crassipes* as endangered.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *C. crassipes* should be classified as an endangered species. Procedures found at section 4(a)(1) of the Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be 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 *C. crassipes* I.M. Johnston (Terlingua Creek cat's-eye) are as follows:

A. The present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

A private resort has been selling small tracts in Brewster County, including areas that contain populations of *C. crassipes*. More than 90 percent of the lots in the resort are sold. If any of the numerous landowners decide to develop their property, some of the sites or some of the plants could be destroyed. The numerous roads constructed by the resort probably destroyed some individual plants, as the roads cut through several of the population sites. Additional road construction or maintenance could possibly eliminate more plants in the area.

Cryptantha crassipes is not known to be palatable to livestock even though grazing occurs in the area. Livestock may have a negative impact on this species through trampling and surface disturbance.

The barren landscapes that support *C. crassipes* are potential abuse areas for ORV's. Several hills around the closest town are already crisscrossed with ruts from vehicle traffic. A few sites of *C. crassipes* already have one or two sets of tracks. Off-road vehicles destroy plants, create surface disturbances, and increase habitat erosion, all of which are detrimental to seedling establishment and growth.

Clay (bentonite) mining occurs north of *C. crassipes* sites. It is unknown whether *C. crassipes* sites have economic value for mining or contain bentonite.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

None known. Because of its rarity, *C. crassipes* is of interest to botanists and other rare plant enthusiasts. Therefore, collection of the plant is a minor but present threat.

C. Disease or Predation

None has been observed.

D. The Inadequacy of Existing Regulatory Mechanisms

There are no existing Federal or state laws that protect *C. crassipes*. The Act would provide protection and encourage active management through the "Available Conservation Measures" discussed below.

E. Other Natural or Manmade Factors Affecting its Continued Existence

Cryptantha crassipes is a narrow endemic that is substrate specific. The recent status survey (Poole 1987) documented only mature plants. No seedlings were observed. Seedling establishment for desert plants is often episodic and infrequent. Therefore. any threats that destroy existing plants could lead to extinction of the species.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list *C. crassipes* as endangered. The six populations of *C. crassipes* are vulnerable to damage from road construction, development, livestock trampling, and ORV use. The species is not protected by Federal or state law. Critical habitat is not being proposed for the reasons discussed below.

Critical Habitat

Section 4(a)(3) of the Act requires, to the maximum extent prudent and determinable, that the Secretary designate 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. No direct attention should be drawn toward the species or its location. Any type of publicity on this species could make it susceptible to increased visitation or collection, which would be detrimental to the survival of this rare endemic. As discussed under Factor B in the Summary of Factors Affecting the Species, taking is a minor but present threat to *C. crassipes*. The taking of plants is difficult to enforce, and is regulated by the Act only in cases of (1) removal and reduction to possession of listed plants from lands under Federal jurisdiction, or their malicious damage or destruction on such lands; and (2) removal, cutting, digging up, or damaging or destroying in knowing violation of any state law or regulation, including state criminal trespass law. Such provisions are difficult to enforce, and publication of critical habitat descriptions and maps would make *C. crassipes* more vulnerable and increase enforcement problems.

The populations of *C. crassipes* are found on private lands where Federal involvement in land-use activities does not generally occur. Additional protection resulting from critical habitat designation is achieved through section 7 consultation process. Since section 7 would not apply to the majority of land-use activities occurring within critical habitat, its designation would not appreciably benefit the species.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the 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 Act provides for possible land acquisition and cooperation with the states and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate

their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. There are no known populations of *C. crassipes* that either occur on Federal land and/or would be affected by activities authorized, funded, or carried out by a Federal agency.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general prohibitions and exceptions that apply to all endangered plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale this species in interstate or foreign commerce, or to remove and reduce to possession the species from areas under Federal jurisdiction. In addition, for endangered plants, the 1988 amendments (Pub. L. 100–478) to the Act prohibit the malicious damage or destruction on Federal lands and the removal, cutting, digging up, or damaging or destroying of endangered plants in knowing violation of any state law or regulation, including state criminal trespass law. Certain exceptions apply to agents of the Service and state conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances.

It is anticipated that few trade permits would ever be sought or issued because the species is not common in cultivation or in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, P.O. Box 3507, Arlington, Virginia 22201 (703/358–2104).

National Environmental Policy Act

The Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act, 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

Poole, J.M. 1987. Status report on *Cryptantha crassipes*. U.S. Fish and Wildlife Service. Albuquerque, NM. 20 pp. + maps.

Author

The primary author of this final rule is Sonja Jahrsdoerfer, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103 (505/766–3972 or FTS 474–3972).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

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

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.12(h) by adding the following, in alphabetical order under the family Boraginaceae, 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					
Boraginaceae—Borage family:						
Cryptantha crassipes	Terlingua Creek cat's-eye	U.S.A. (TX)	E	439	NA	NA.

Dated: September 20, 1991.

Bruce Blanchard,

Acting Director, Fish and Wildlife Service.

[FR Doc. 91-23384 Filed 9-27-91; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF THE INTERIOR

50 CFR Part 17

RIN 1018-AB42

Endangered and Threatened Wildlife and Plants; Final Rule To List the Plant Phlox nivalis ssp. texensis (Texas Trailing Phlox) as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service (Service) determines *Phlox nivalis* ssp. *texensis* (Texas trailing phlox) to be an endangered species under the authority of the Endangered Species Act of 1973 (Act), as amended. This plant presently is known from only 2 sites in east Texas, out of 17 sites that were known previously. The species is threatened by habitat loss from housing development, clearing for pine plantations, highway and pipeline construction, and fire suppression in a savanna ecosystem. This action will implement Federal protection provided by the Act for Texas trailing phlox. Critical habitat is not being designated.

EFFECTIVE DATE: October 30, 1991.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Service's Ecological Services Field Office, 17629 El Camino Real, suite 211, Houston, Texas 77058.

FOR FURTHER INFORMATION CONTACT: Kathy Nemec (see **ADDRESSES**) at (713) 229–3681 or FTS 526–6700.

SUPPLEMENTARY INFORMATION:

Background

Phlox nivalis ssp. *texensis* is a trailing phlox that is known from only two sites in east Texas. The species is endemic to the Big Thicket area of Texas and associated with the following species: *Fagus grandiflora* (American beech), *Quercus* spp. (oak), *Magnolia* spp. (magnolia), *Pinus* spp. (pine), *Liquidambar styraciflua* (American sweetgum), *Bothriochloa* spp. (beardgrass), *Carya* spp. (hickory), and *Ilex vomitoria* (yaupon). Historically, Texas trailing phlox occurred in open, grassy, frequently burned, longleaf pine (*Pinus plaustris*) savanna in sandy soil.

Texas trailing phlox is a short (30 cm.; 12 in.) clumpforming, perennial species with spreading, evergreen shoots. Sterile shoots have crowded, awl-shaped and needle-like leaves; fertile shoots have short, lance-shaped leaves. The flowers occur in a three-to-six flowered cyme; shoots and stems are pubescent with gland-tipped hairs. Flowers are purple-lavender, deep rose, pink, or white, and appear from late March to early April. The fruit is a three-seeded capsule. Little is known about the reproductive biology of this species.

Historically, Texas trailing phlox was known from Hardin, Tyler, and Polk Counties in east Texas. Seven collection sites were documented in the 1940's from Tyler County, five of those were multiple collections. Lundell (1942) described the species as "* * * abundant in the pine lands * * * between Woodville and Warren in Tyler County." Populations from the Big Thicket National Preserve, first documented in 1948, were not seen again until relocated by Geyata Ajilvsgi in 1972 (Mahler 1980).

Mahler (1980) documented five sites from Hardin and Tyler Counties in his status survey. Three populations of only a few clumps each, were located within a short distance of each other in Tyler County. In Hardin County, Texas trailing phlox occurs at two sites on and near Texas Nature Conservancy (TNC) land. The populations in Polk County were not relocated during Mahler's status survey (1980).

During 1989, a Texas Natural Heritage Program botanist relocated 2 out of 17 sites documented in the Heritage Program data base. The largest population occurs on TNC land in Hardin County, where several hundred plants are scattered across a former slash pine plantation in a sandy soil, fire-maintained pine savanna. A small population of only six flowering plants occurs at the edge of a pine plantation in Tyler County (Poole, Texas Parks and Wildlife Department, *in litt.*, 1989).

Texas trailing phlox was first collected in Hardin County, Texas, by Whitehouse in 1931. Lundell described the taxon as a subspecies of *Phlox nivalis* in 1942 and elevated it to the rank of species in 1945. Wherry (1955) in his monograph of Phlox and systematic treatment for the Flora of Texas (1966), recognized the taxon as a subspecies of *Phlox nivalis*.

Texas trailing phlox is known only from Texas. However, a disjunct relative, *Phlox nivalis* spp. *nivalis*, occurs about 400 miles eastward in Florida. Texas trailing phlox differs from this subspecies in having minute, glandular hairs (Wherry 1955).

Section 12 of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*) directed the Secretary of the Smithsonian Institution to prepare a report of those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94-51, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) of its acceptance of the Smithsonian Institution report as a petition within the context of Section 4 of the Act and of its intention to review the status of the plant taxa named within. On June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant species to be endangered species pursuant to Section 4 of the Act.

This list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** publication. Texas trailing phlox was included in the July 1, 1975, notice of review and in the June 16, 1976, proposal.

The Endangered Species Act Amendments of 1978 required that all proposals over two years old be withdrawn. A one-year grace period was given to those proposals already more than 2 years old. Subsequently, on December 10, 1979, (44 FR 70796), the Service published a notice of the withdrawal of the portion of the June 16, 1976, proposal that had not been made final, along with other proposals that had expired; this notice of withdrawal included Texas trailing phlox.

On December 15, 1980, (45 FR 82480) and September 27, 1985, (50 FR 39526), the Service published updated notices reviewing the native plants being considered for classification as threatened or endangered. Texas trailing phlox was included in these notices as a category 1 species. Category 1 comprises taxa for which the Service has sufficient biological data to support proposing them as endangered or threatened.

Section 4(b)(3)(B) of the Endangered Species Act, as amended in 1982, requires the Secretary to make findings on certain pending petitions within one year of their receipt. Section 2(b)(1) of the Act's Amendments of 1982 further requires that all petitions pending on October 12, 1982, be treated as having been newly submitted on that date. Because Texas trailing phlox was included in the 1980 notice, the petition to list this species was treated as being newly submitted on October 12, 1982. In 1983, 1984, 1985, 1986, 1987, 1988, and 1989, the Service made the required one-year findings that the listing of Texas trailing phlox was warranted, but precluded by other listing actions of higher priority. Biological data, supplied by Mahler (1980), and Poole (*in litt.*, 1989), fully support the listing of Texas trailing phlox. A proposed rule to determine endangered status for this species was published in the **Federal Register** on May 29, 1990 (55 FR 21760).

Summary of Comments and Recommendations

In the May 29, 1990 proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices inviting public comment were published in the Houston Post on June 18, 1990; the Houston Chronicle on June 18, 1990; the Beaumont Enterprise on June 17, 1990; the Polk County Enterprise on June 18, 1990; the Silsbee Bee on June 21, 1990; and the Woodsman Publishing on June 21, 1990. Nine comments were received and are discussed below: One from a Federal agency, one from a private organization, and the remainder from individuals. All comments were supportive of the listing proposal.

Issue 1: One commenter mentioned the need to designate critical habitat for Texas trailing phlox.

Response: The threat of loss due to illegal collection remains a concern; publication of critical habitat descriptions and maps would make the plant more vulnerable and increase enforcement problems. Moreover, protection resulting from critical habitat designation is achieved through the section 7 process. Since Texas trailing phlox is currently known only from private lands where section 7 largely does not apply, the designation of critical habitat would not appreciably benefit the species. Critical habitat for Texas trailing phlox may be designated in the future if populations are found on Federal lands.

Issue 2: Some commenters requested additional surveys be done in the Big Thicket National Preserve to find other populations of the Texas trailing phlox.

Response: Based on the best scientific and commercial information available, the Service has determined that the Texas trailing phlox qualifies to be listed as endangered as explained in the "Summary of Factors" section of this rule. The necessity for further surveys that aid in the recovery of the plant will be addressed following the listing process.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that Texas trailing phlox should be classified as an endangered species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be 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 *Phlox nivalis* ssp. *texensis* Lundell (Texas trailing phlox) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

Loss of habitat has caused this subspecies to decline within its range during the last 30 years. Because of the small number of plants within a small number of populations in only two general localities, the taxon is vulnerable to further loss of habitat (Mahler 1980). Housing development and large scale land clearing for pine plantations in Tyler County, Texas, have eliminated former populations of Texas trailing phlox. Pipeline construction adjacent to the TNC land recently destroyed a once thriving population. The population on the TNC land could be negatively affected by aerial drift from herbicide spray that is often applied from low-flying aircraft in timber areas (Mahler 1980). Loss of additional habitat would be detrimental to this plant.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

None known. Because of its rarity and potential use as an ornamental, Texas trailing phlox is of interest to botanists, plant breeders, and rare plant enthusiasts. Therefore, collection of plants is a potential threat.

C. Disease or Predation

None apparent.

D. The Inadequacy of Existing Regulatory Mechanisms

Texas trailing phlox is not currently protected by either Federal or State law. The Act would provide protection and encourage active management through the "Available Conservation Measures" discussed below.

E. Other Natural or Manmade Factors Affecting its Continued Existence

Fire suppression within the savanna ecosystem has reduced the amount of suitable habitat for this species. Much of the former habitat has deteriorated because of aggressive invasion of successional hardwoods into unburned pine savannas. A prescribed burning and slash pine removal program on the TNC land has enhanced habitat for Texas trailing phlox.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list Texas trailing phlox as endangered, as the Service has determined it to be in danger of extinction throughout all or a significant portion of its range. With documented population declines and imminent threats, the species warrants protection under the Act. Critical habitat is not being designated for the reasons discussed below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires, to the maximum extent prudent and determinable, that the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not presently prudent for this species. There are only two sites known for Texas trailing phlox. Loss of even a few plants to activities such as collection for scientific purposes could extirpate the species. As discussed under Factor B in the Summary of Factors Affecting the Species, Texas trailing phlox is threatened by taking, an activity difficult to enforce against and only regulated by the Act with respect to plants in cases of (1) removal and reduction to possession of endangered plants from lands under Federal jurisdiction, or their malicious damage or destruction on such lands; and (2) removal, cutting, digging up, or damaging or destroying in knowing violation of any State law or regulation, including State criminal trespass law. Such provisions are difficult to enforce. Publication of critical habitat descriptions and maps would make Texas trailing phlox more vulnerable and increase enforcement problems.

The populations of Texas trailing phlox are found on private lands where Federal involvement in land-use activities does not generally occur. Additional protection resulting from critical habitat designation is achieved through the section 7 consultation process. Since section 7 would not apply to the majority of land-use activities occurring within critical habitat, its designation would not appreciably benefit the species

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and result in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not

likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. There are no known populations of Texas trailing phlox that either occur on Federal land and/or would be affected by activities authorized, funded, or carried out by a Federal agency.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general prohibitions and exceptions that apply to all endangered plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale this species in interstate or foreign commerce, or to remove and reduce to possession the species from areas under Federal jurisdiction. In addition, for endangered plants, the 1988 amendments (Pub. L. 100–478) to the Act prohibit the malicious damage or destruction on Federal lands and the removal, cutting, digging up, or damaging or destroying of endangered plants in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances.

It is anticipated that few trade permits would ever be sought or issued because the species is not common in cultivation or in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, P.O. Box 3507, Arlington, VA 22201 (703/358–2104).

National Environmental Policy Act

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

References Cited

Lundell, C.L. 1942. Studies of American spermatophytes-III. Contrib. Univ. Mich. Herb. 8:77–79.

Mahler, W.F. 1980. Status report, *Phlox nivalis* ssp. *texensis*. Lundell. U.S. Fish and Wildlife Service, Albuquerque, NM. 12 pp.

Wherry, E.T. 1966. Polemoniaceae. *in* C.I. Lundell (ed.), Flora of Texas 1(3):283–321.

Wherry, E.T. 1955. The genus *Phlox*. Morris Arboretum Monographs III. 174 pp.

Author

The primary author of this final rule is Sonja Jahrsdoerfer, U.S. Fish and Wildlife Service, 222 South Houston, suite A, Tulsa, OK 74127 (918/581–7458 or FTS 745–7458).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

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

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.12(h) by adding the following, in alphabetical order under the Family Polemoniaceae, 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					
*	*	*	*	*	*	
Polemoniaceae—Phlox family:						
*	*	*	*	*	*	
Phlox nivalis ssp. *texensis*	Texas trailing phlox	U.S.A. (TX)	E	440	NA	NA
*	*	*	*	*	*	

Dated: September 20, 1991.

Bruce Blanchard,

Director, Fish and Wildlife Service.

[FR Doc. 91–23385 Filed 9–27–91; 8:45 am]

BILLING CODE 4310–55–M

50 CFR Part 17

RIN 1018–AB42

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for Two Na Pali Coast Plants: Hedyotis st.-johnii (Na Pali Beach Hedyotis) and Schiedea apokremnos (Ma'oli'oli)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) determines two plants, *Hedyotis st.-johnii* (Na Pali beach hedyotis) and *Schiedea apokremnos* (ma'oli'oli), to be endangered pursuant to the Endangered Species Act of 1973, as amended (Act). These species are known only from the northwest (Na Pali) coast of the island of Kauai, Hawaii. *Hedyotis st.-johnii* is known from 5 populations totaling less than 200 individuals, and *S. apokremnos* from 5 known populations totaling about 100 plants. The latter species is threatened by predation and habitat degradation by feral goats, and both species are threatened by competition from alien plant species. The small number and size of populations are a considerable threat to both species, as the limited gene pool may depress reproductive vigor, or a single environmental disturbance could destroy a significant

percentage of the extant individuals. This rule implements the protection and recovery provisions provided by the Act for these plants.

EFFECTIVE DATE: October 30, 1991.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, room 6307, Honolulu, Hawaii 96813.

FOR FURTHER INFORMATION CONTACT: Joan E. Canfield, at the above address (808/541–2749 or FTS 551–2749).

SUPPLEMENTARY INFORMATION:

Background

Hedyotis st.-johnii was first collected in 1947 by Harold St. John, E.J. Britten, and R.S. Cowan on the vertical sea cliffs between Kalalau and Honopu valleys on Kauai. The next collection was made by B.C. Stone in 1956 from the same location. Two years later Stone and Lane (1958) described the plant as a new species, naming it in honor of its discoverer. All subsequent collections have been from a 4.5 mile (mi) (7.2 kilometer (km)) long section of the Na Pali coast: between Kalalau and Honopu Beaches, and from Nualolo Valley, Nualolo Kai, and Milolii Beach. *Hedyotis st.-johnii* is still extant in all of those areas except perhaps Nualolo Kai, which has not been resurveyed in 11 years (Carolyn Corn and Robert Hobdy, State Division of Forestry and Wildlife, and Steven Perlman, Hawaii Plant Conservation Center (HPCC), pers. comms., 1990). Less than 200 individuals have been seen, with some populations numbering as low as 1 plant (Corn 1984, Hawaii Heritage program (HHP) 1990b, HPCC 1990a). Similar, inaccessible habitat might harbor as yet undiscovered individuals (C. Corn and R. Hobdy, pers. comms., 1990). Known only from State-owned land, *H. st.-johnii* is restricted to Na Pali Coast State Park.

Schiedea apokremnos was first collected in the early 1900's by J.M. Lydgate from an unrecorded locality on Kauai. Harold St. John made the next collection at Nualolo Kai on the Na Pali coast in 1965. Five years later, he described the taxon as a new species (St. John 1970), naming it for the plant's habitat of steep cliffs. All subsequent collections have been from Kaaweiki Ridge and three areas along a 6.5 mi (10.5 km) long section of the Na Pali coast: Milolii Valley, Kalalau Beach, and between Kaaalahina and Manono ridges. The species is probably extant at all locations except Nualolo Kai, although the Kalalau and Milolii populations have not been revisited for over 6 years (C. Corn, Timothy Flynn, National Tropical Botanical Garden, and R. Hobdy, pers. comms., 1990). A total of about 100 plants has been seen, with only the Kaaalahina-Manono population numbering more than 5 individuals (Corn 1984; HHP 1990c; HPCC 1990b; T. Flynn and S. Perlman, pers. comms., 1990). As with *Hedyotis st.-johnii*, more plants could exist in similar, inaccessible habitat (R. Hobdy and S. Perlman, pers. comms., 1990). In addition, a *Schiedea* recently collected from a gulch near the head of Kalalau Valley, if identified as *S. apokremnos*, would extend the known range of this species (R. Hobdy, pers. comm., 1990). Like *H. st.-johnii*, *S. apokremnos* is known strictly from State-owned land. The Kaaweiki population is in Puu Ka Pele Forest Reserve, while all others are in Na Pali Coast State Park.

Hedyotis st-johnii is a succulent perennial herb of the coffee family (Rubiaceae) with slightly woody, trailing, quadrangular stems up to 1 foot (ft) (30 centimeters (cm)) long. The fleshy leaves are clustered toward the base of the stem and are broadly ovate to broadly elliptic, 2 to 6 inches (in) (5.5 to 15 cm) long and about 2 in (3.5 to 7.5 cm) wide. Clusters of flowers are borne on 3 to 6 in (7 to 15 cm) long flowering stems. The leafy, broadly ovate calyx lobes are about 0.1 in (3 to 4 millimeters (mm)) long and wide, enlarging in fruit to about 0.4 in (8 to 11 mm) long and wide. The green petals are fused into a tube about 0.2 in (5 to 8 mm) long and wide. The fruit consists of kidney-shaped capsules with dark brown to blackish angular seeds. *H. st.-johnii* is distinguished from related species by its succulence, basally clustered fleshy leaves, shorter floral tube, and large leafy calyx lobes when in fruit (Wagner *et al.* 1990).

Schiedea apokremnos is a low, branching shrub of the pink family (Caryophyllaceae) that is 8 to 20 in (20 to 50 cm) tall. The leaves are oppositely arranged, oblong, somewhat fleshy and glabrous, and about 1 to 2 in (3 to 5 cm) long and 0.2 to 0.5 in (0.6 to 1.2 cm) wide. The flowers lack petals and are in clusters with green and often purple-tinged bracts and sepals; the sepals are about 0.1 in (2 to 3 mm) long. The round to kidney-shaped seeds are produced in capsules. *Schiedea apokremnos* is distinguished from related species by shorter sepals, nectaries, and capsules (Wagner *et al.* 1990).

Hedyotis st.-johnii and *Schiedea apokremnos* grow in the crevices of near-vertical coastal cliff faces. While *H. st.-johnii* is confined to north-facing, nearly vertical sea cliffs within the spray zone below 250 ft (75 meters (m)) elevation, *S. apokremnos* extends 0.3 mi (0.5 km) inland, occupying cliffs and rock outcrops from 200 to 1,100 ft (60 to 330 m) elevation (Carr 1982; HHP 1990b; HPCC 1990a, 1990b; C. Corn and T. Flynn, pers. comms., 1990). Sparse dry coastal shrub vegetation with *Artemisia australis* ('ahinahina), *Chamaesyce celastroides* ('akoko), and the alien *Pluchea symphytifolia* (sourbush) is typical of the habitat of *H. st.-johnii* and lower elevation sites of *S. apokremnos* (HHP 1990b, 1990c; HPCC 1990a, 1990b; S. Perlman, pers. comm., 1990). The upper elevation site of *S. apokremnos* is dominated by the introduced *Leucaena leucocephala* (koa haole), with natives *Wilkesia hobdyi* (dwarf iliau), *Lipochaeta connata* (nehe), and *Lobelia niihauensis* (T. Flynn, pers. comm., 1990).

The greatest immediate threat to the survival of *Schiedea apokremnos* is predation and habitat degradation by feral goats. As a result of past goat activity, *Hedyotis st.-johnii* is almost entirely restricted to sites inaccessible to goats, where the plants are now threatened by competition from alien plant species. Alien plants are a threat to at least one population of *S. apokremnos* as well. The small size of most populations and a restricted distribution are serious potential threats to these two species. The limited gene pool may depress reproductive vigor, or a single environmental disturbance could destroy a significant percentage of the extant individuals. Landslides and fire pose additional potential threats to both species. Some *S. apokremnos* individuals are functionally female and must be cross-pollinated to set seed. This reproductive strategy may threaten populations with few individuals (Stephen Weller, University of California at Irvine, pers. comm., 1990).

Federal action on *Hedyotis st.-johnii* began as a result of section 12 of the Act, which directed the Secretary of the Smithsonian Institution to prepare a report on plants considered to be endangered, threatened, or extinct in the United States. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. In that document, *H. st.-johnii* was considered to be endangered; *S. apokremnos* was not included. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) of its acceptance of the Smithsonian report as a petition within the context of section 4(c)(2) (now section 4(b)(3)) of the Act, and giving notice of its intention to review the status of the plant taxa named therein. As a result of that review, on June 16, 1976, the Service published a proposed rule in the Federal

Register (41 FR 24523) to determine endangered status pursuant to section 4 of the Act for approximately 1,700 vascular plant species, including *H. st.-johnii*. The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** publication.

General comments received in response to the 1976 proposal are summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909). In 1978, amendments to the Act required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to proposals already over 2 years old. On December 10, 1979, the Service published a notice in the **Federal Register** (44 FR 70796) withdrawing that portion of the June 16, 1976, proposal that had not been made final, along with four other proposals that had expired. The Service published an updated notice of review for plants on December 15, 1980 (45 FR 82479), including *Hedyotis st.-johnii* as a Category 1 candidate. Category 1 species are those for which the Service has on file substantial information on biological vulnerability and threats to support preparation of listing proposals. In the updated notice of review for plants published by the Service on September 27, 1985 (50 FR 39525), and February 21, 1990 (55 FR 6183), *Schiedea apokremnos* was included along with *H. st.-johnii* as a Cateogy 1 candidate.

Section 4(b)(3)(B) of the Act requires the Secretary to make findings on certain pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. On October 13, 1983, the Service found that the petitioned listing of these species was warranted, but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act; notification of this finding was published on January 20, 1984 (49 FR 2485). Such a finding requires the petition to be recycled, pursuant to section 4(b)(3)(C)(i) of the Act. The finding was reviewed in October of 1984, 1985, 1986, 1987, 1988, and 1989. On August 3, 1990, the Service published in the **Federal Register** (55 FR 31612) a proposal to list *Hedyotis st.-johnii* and *Schiedea apokremnos* as endangered. This proposal was based primarily on information supplied by the Hawaii Heritage Program, several reports from the Hawaii Division of Forestry and Wildlife, and observations of botanists and naturalists. The Service now determines *Hedyotis st.-johnii* and *Schiedea apokremnos* to be endangered species with the publication of this rule.

Summary of Comments and Recommendations

In the August 3, 1990, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final listing decision. The public comment period ended on October 2, 1990. Appropriate State agencies, county and city governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice was published in The Garden Island on August 15, 1990, which invited general public comment. The one comment that was received was from a conservation organization that noted it had no information or advice to add to the proposed rule.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Hedyotis st.-johnii* and *Schiedea apokremnos* should be classified as endangered species. Procedures found at section 4 of the Endangered Species Act (16 U.S.C. 1533) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Hedyotis st.-johnii* B. Stone and Lane (Na Pali beach hedyotis) and *Schiedea apokremnos* St. John (ma'oli'oli) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Feral goats and cattle have altered and degraded the vegetation of much of Kauai, including the valleys and slopes where *Hedyotis st.-johnii* and *Schiedea apokremnos* have been collected (Corn *et al.* 1979, HHP 1990a). Goats have inhabited these rugged areas of the island for over 150 years (Cuddihy and Stone 1990). An estimated 1,650 goats inhabited the Na Pali coast in 1982; they are still abundant throughout the portion of the coast that *H. st.-johnii* and *S. apokremnos* inhabit (HHP 1990d, Tomich 1986). These goats are managed by the State as a game species with a limited hunting season (Tomich 1986). The restriction of these two plant species to inaccessible cliffs suggests that goat predation may have eliminated them from more accessible locations, as is the case for other rare plants of the Na Pali coast (Corn *et al.* 1979; R. Hobdy, pers. comm., 1990). While browsing on *S. apokremnos* and vegetation adjacent to both species, goats disturb the ground, which limits seedling development, accelerates erosion, reduces habitat, and promotes the invasion of more aggressive alien plants (Carr 1982, Corn *et al.* 1979, HHP 1990a, Herbst 1989, Scott *et al.* 1986). Koa haole and *Hyptis pectinata* (comb hyptis) are common invasive alien species at the Kaaweiki site of *S. apokremnos* (T. Flynn, pers. comm., 1990). Most of the other populations of *S. apokremnos* and some populations of *H. st.-johnii*, confined to sparsely vegetated cliff crevices, are apparently not threatened by alien plants (R. Hobdy, pers. comm., 1990). However, alien plants do constitute the primary threat to other populations of *H. st.-johnii*, with sourbush being the main competitor (C. Corn and S. Perlman, pers. comms., 1990).

Landslides are another potential threat to *Hedyotis st.-johnii* (HPCC 1990a) and *Schiedea apokremnos* (C. Corn, pers. comm., 1990). Vegetation was destroyed by a recent landslide near Honopu Beach on a cliff similar to habitat of *H. st.-johnii* (C. Corn, pers. comm., 1990). Corn *et al.* (1979) consider fire an immediate serious threat to the rare plants of the cliff faces and valleys of the Na Pali coast. Under dry conditions, human-set fires would spread rapidly and destroy these plants, due to the strong prevailing winds and dry fuel load on cliff ledges (Corn *et al.* 1979). Fire poses a potential and growing threat to *H. st.-johnii* and *S. apokremnos*, especially as already heavy recreational use of the Na Pali Coast State Park increases (Corn *et al.* 1979, Culliney 1988, HHP 1990d). Because of their inaccessible location, however, it is unlikely that these two species would be otherwise threatened by proposed park development (C. Corn and Wayne Souza, Division of State Parks, pers. comms., 1990).

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Illegal collecting for scientific or horticultural purposes or excessive visits by people interested in seeing rare plants could result from increased publicity and could seriously affect the species (HHP 1990d). The co-occurrence at one site of *Schiedea apokremnos* and

dwarf iliau, currently proposed for listing as an endangered species (Herbst 1989), could bring additional publicity and visitation. Disturbance to the accessible areas by trampling would promote erosion and greater ingress by competing alien species.

C. Disease or Predation

Predation by feral goats is probably the greatest present threat to the survival of *Schiedea apokremnos* (T. Flynn, R. Hobdy, and S. Perlman, pers. comms., 1990). Goat browsing on this species has been observed at the Kaaweiki population for the past several years (T. Flynn, pers. comm., 1990). At precisely the same locality, grazing damage by increasing numbers of goats is recognized as a serious present threat to another rare species, dwarf iliau (Carr 1982, Herbst 1989). The most accessible population of *Hedyotis st.-johnii*, behind Kalalau Beach, is threatened by goat predation (S. Perlman, pers. comm., 1990). Other than that site, however, goat predation has apparently already eliminated *H. st.-johnii* from all sites goats are capable of reaching (C. Corn, R. Hobdy, and S. Perlman, pers. comms., 1990). No evidence of disease or predation by other species has been reported for either species.

D. The Inadequacy of Existing Regulatory Mechanisms

All populations of *Hedyotis st.-johnii* and *Schiedea apokremnos* are located on State-owned park or forest reserve land. State regulations prohibit the removal, destruction, or damage of plants found on these lands. However, the regulations are difficult to enforce because of limited personnel. Hawaii's Endangered Species Act (Hawaii Revised Statutes (HRS), sect. 195D–4(A)) states, "Any species of aquatic life, wildlife, or land plant that has been determined to be an endangered species pursuant to the (Federal) Endangered Species Act (of 1973) shall be deemed to be an endangered species under the provisions of this chapter * * *" Further, the State may enter into agreements with Federal agencies to administer and manage any area required for the conservation, management, enhancement, or protection of endangered species (HRS, sect. 195D–5(c)). Funds for these activities could be made available under section 6 of the Federal Act (State Cooperative Agreements). Listing of *H. st.-johnii* and *S. apokremnos* will therefore reinforce and supplement the protection available to the species under State law. The Federal Act will also offer additional protection to the two species, because it is a violation of the Act for any person to remove, cut, dig up, damage, or destroy an endangered plant in an area not under Federal jurisdiction in knowing violation of any State law or regulation or in the course of any violation of a State criminal trespass law.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

The small size of the extant populations (totaling 100 individuals of *Schiedea apokremnos* and less than 200 of *Hedyotis st.-johnii*) is in itself a considerable threat to these species. The limited gene pool may depress reproductive vigor, or a single fire, landslide, or other natural or human-caused environmental disturbance could destroy a significant percentage of the known individuals. Reproduction of *S. apokremnos* may also be potentially threatened by the species' breeding system: Some progeny of one individual are known to be unisexual, requiring cross-pollination to set seed (S. Weller, pers. comm., 1990). If those plants do not flower simultaneously or are too widely separated for pollination, no seed will be set.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these two species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Hedyotis st.-johnii* and *Schiedea apokremnos* as endangered. For the two species, only about 200 and 100 individuals respectively are known in the wild, and they face threats from feral goat predation and habitat degradation. Competing alien plants, fires, and landslides pose additional threats. Small population size makes these species particularly vulnerable to extinction from stochastic events. Because these two species are in danger of extinction throughout all or a significant portion of their ranges, they fit the definition of endangered as defined in the Act. Critical habitat is not being designated for these species for reasons discussed in the "Critical Habitat" section of this rule.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat concurrently with determining a species to be endangered or threatened. The Service finds that designation of critical habitat is not presently prudent for these two species. Such a determination would result in no known benefit to the species. The publication of descriptions and maps required when critical habitat is designated would increase the degree of threat of trampling (causing erosion and invasion of alien plants), vandalism, and taking at the Kaaweiki site of *Schiedea apokremnos*. *Hedyotis st.-johnii* might be subject to an increased threat of taking and vandalism as well. The listing of these species as endangered publicizes the rarity of the plants and, thus, can make them attractive to researchers, curiosity seekers, or collectors of rare plants.

All involved parties and the landowner have been notified of the location and importance of protecting the habitat of these two species. Protection of the species' habitat will be addressed through the recovery process and, if applicable, the section 7 consultation process. Therefore, the Service finds that designation of critical habitat for *Hedyotis st.-johnii* and *Schiedea apokremnos* is not prudent at this time, because such designation would increase the degree of threat from vandalism, collecting, or other human activities and because it is unlikely to aid in conservation of these species.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) of the Act requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter

into formal consultation with the Service. There are no known Federal activities that might affect either of these species.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general prohibitions and exceptions that apply to all endangered plants. With respect to *Hedyotis st.-johnii* and *Schiedea apokremnos*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal with respect to any endangered plant for any person subject to the jurisdiction of the United States to import or export; transport in interstate or foreign commerce in the course of a commercial activity; sell or offer for sale these species in interstate or foreign commerce; remove and reduce to possession any such species from areas under Federal jurisdiction; maliciously damage or destroy any such species on any area under Federal jurisdiction; or remove, cut, dig up, damage, or destroy listed plants on any other area in knowing violation of any State law or regulation or in the course of any violation of a State criminal trespass law. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered plant species under certain circumstances.

It is anticipated that few trade permits would ever be sought or issued because these two species are not common in cultivation or in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, room 432–ARLSQ, Arlington, Virginia 22203–3507 (703/358–2104 or FTS 921–2093).

National Environmental Policy Act

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

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Author

The primary author of this final rule is Dr. Joan E. Canfield, Fish and Wildlife Enhancement, Pacific Islands Office, U.S. fish and Wildlife Service, 300 Ala Moana Boulevard, Room 6307, P.O. Box 50167, Honolulu, Hawaii 96850 (808/541–2749 or FTS 551–2749).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulations Promulgation

PART 17—[AMENDED]

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

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

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Public Law 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.12(h) by adding the following, in alphabetical order under the families Caryophyllaceae and Rubiaceae, respectively, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
*	*	*	*	*	*	
Caryophyllaceae—Pink family:						
*	*	*	*	*	*	
Schiedea apokremnos	Ma'oli'oli	U.S.A. (HI)	E	441	NA	NA
*	*	*	*	*	*	
Rubiaceae—Coffee family:						
*	*	*	*	*	*	

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Hedyotis st.-johnii	Na Pali beach hedyotis	U.S.A. (HI)	E	441	NA	NA

Dated: September 20, 1991.

Bruce Blanchard,

Acting Director, Fish and Wildlife Service.

[FR Doc. 91-23386 Filed 9-27-91; 8:45 am]

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federal register

Monday
September 30, 1991

Part XI

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Listing the Alamosa Springsnail and the Socorro Springsnail and Six Foreign Reptiles as Endangered; Final Rules

Department of Commerce

National Oceanic and Atmospheric Administration

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Threatened Status for the Gulf Sturgeon; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB42

Endangered and Threatened Wildlife and Plants; Final Rule To List the Alamosa Springsnail and the Socorro Springsnail as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) determines the Alamosa springsnail (*Tryonia alamosae*) and the Socorro springsnail (*Pyrgulopsis neomexicana*) to be endangered species, under the authority of the Endangered Species Act of 1973 (Act), as amended. These snails occur in thermal springs in Socorro County, central New Mexico. The Alamosa springsnail is found in a single complex of five thermal springs, and the Socorro springsnail is found in only one spring. Because of their dependence on continuous surface flows, these species are threatened by any change in conditions that would lessen the flow of water from the springs. Other potential threats include the introduction of non-native competing or predaceous organisms into the springs and loss of organic film or other natural elements from their habitat. This rule implements the protection and recovery provisions afforded by the Act for these snails. Critical habitat is not being designated.

EFFECTIVE DATE: October 30, 1991.

ADDRESSES: The complete file for this rule will be available for inspection, by appointment, during normal business hours at the Ecological Services Field Office, U.S. Fish and Wildlife Service, 3530 Pan American Highway NE., suite D, Albuquerque, New Mexico 87107.

FOR FURTHER INFORMATION CONTACT: Gerald Burton (see ADDRESSES) at (505) 883–7877 or FTS 474–7877.

SUPPLEMENTARY INFORMATION:

Background

Both *Tryonia alamosae* and *Pyrgulopsis neomexicana* are members of the family Hydrobiidae, which is separated from all but two other New Mexico families of gastropods (snails and allies) by the presence of gills (rather than a lung-like breathing device) and a lid-like structure (operculum) on the foot (New Mexico Department of Game and Fish (MMDGF) 1985).

The Socorro springsnail was described originally from warm springs in Socorro, New Mexico. The collector and date of the unique first sample are unknown (Taylor 1983). The specimens came from the C.M. Wheatley collection and are likely to have been collected in the 19th century (Taylor, San Francisco State University, *in litt.*, 1980). The species was formally described and named *Amnicola neomexicana* by Pilsbry in 1916. In 1982, Burch reclassified it as *Fontelicella neomexicana*. Hershler and Thomspon (1987) assigned members of the genus *Fontelicella*, including *F. neomexicana*, to *Pyrgulopsis*.

The Alamosa springsnail was discovered in 1979 by Taylor, and placed in the genus *Tryonia*. The species was described as *Tryonia alamosae* in 1987 (Taylor 1987).

Pyrgulopsis neomexicana has an elongate-ovate shell that is light tan in color, short-spired, and up to 2.5 millimeters (mm) (0.1 inch) in length (NMDGF 1985). Females attain a larger size than males. The penis has a long glandular strip on the terminal lobe, a long penial gland, and three shorter dorsal glandular strips (Taylor 1987). The body and head are dark gray to black. The internal callus is reddish brown to amber, and the operculum is pale. Tentacles range from black or dark gray at the base to pale gray at the tips (Taylor 1987).

Tryonia alamosae is a relatively small and broadly conical species with females larger than males by a factor of almost 50 percent (NMDGF 1985, Taylor 1987). Length of shells range up to 3.0 mm (0.1 inch). The conical shell has up to 5½, regularly convex whorls that are separated by well-impressed sutures (NMDGF 1985). The penis bears a single, broadly conical glandular papilla on the distal left side. The body varies from opaque black to gray. The thin shell is translucent and permits observation of some internal structures except where coated by alone or rendered opaque by wear. The operculum is thin, ovate, and transparent. Tentacles are lightly dusted with melanin (Taylor 1987).

Both snails are totally aquatic, gilled species that occur in slow-velocity water near spring sources in their thermal habitat (NMDGF 1985). Both species occur on stones and among aquatic plants. *Pyrgulopsis neomexicana* is also found in the uppermost layer of an organic muck substrate. *Tryonia alamosae* and *P. neomexicana* are herbivorous, and browse on algae and other items in the organic film of their habitat. *Pyrgulopsis neomexicana* is oviparous, and probably lays its eggs in spring and summer. *Tryonia alamosae* is ovoviviparous, and contains a series of embryos in various stages of development. Because *T. alamosae* lives in a thermally constant environment, reproduction is probably not seasonal, and population size very likely remains relatively stable (NMDGF 1985).

Tryonia alamosae is endemic to central New Mexico. The species is known only from a thermal spring complex in Socorro County. The spring complex consists of five individual springheads that flow together. The Alamosa springsnail is fairly abundant in the springs from which it is known (NMDGF 1985), although there are no estimates of population size. In the largest thermal spring, which is about 2x3 meters (6x10 feet) across and 0.3–0.6 meters (1–2 feet) deep, Taylor (1987) found *T. alamosae* to be abundant in minor rivulets out of the main channel in the canyon where the springs arise. There was a mat of watercress and filamentous green algae over water 1–2 inches (2.5–5 cm) deep, flowing over fine gravel and sand among angular rhyolitic cobbles and boulders. Snails were found in slow current on gravel as well as among vegetation. Associated molluscs were *Lymnaea parva* and *Physa mexicana*. The highest temperature of any of the immediate sources was 27 °C.

Several of the other group of smaller thermal springs that contain *T. alamosae* have been dug out and impounded in the past. Taylor (1987) found that *T. alamosae* was abundant in the slower current of the source area on rhyolitic pebbles and cobbles with organic film. *Physa mexicana* was also abundant, but usually in swifter current. The outflow of the springs forms a brook 0.6–1.0 meters (2–4 feet) wide, in which *Physa mexicana* is common, but *T. alamosae* becomes more scarce and then absent as one leaves the source area and current increases. The highest measured temperature was 28 °C.

The original specimen of *P. neomexicana* reportedly came from one of the thermal springs near Socorro, New Mexico. The species is now extinct at the type locality, but the date and cause of the extinction are uncertain (Taylor 1987). The species has been reported from other springs in Socorro County (Landye 1981), although there is some disagreement on whether or not the species occurred there (Taylor 1987).

Currently, *P. neomexicana* is known from only one spring in Socorro County, where it was found in 1979. The principal spring source has been impounded, which reduced the flowing-water habitat to almost nothing. One tiny spring source remained, with an improved source pool less than 1 m^2 in area with a temperature of 17 °C.

Pyrgulopsis neomexicana was abundant on rootlets in this pool, but was not found in the ditches and ponds irrigating the area. Other molluscs found in the vicinity were *Physa mexicana, Lymnaea modicella,* and *Pisidium casertanum.* In 1981, the colony was found to occupy not only the source but also the outflow tributary about 2.5 meters (8 feet) long to an irrigation ditch. No snails were in the irrigation flow. Total population of *P. neomexicana* was estimated at 5,000 individuals.

The Socorro springsnail, then known as the Socorro snail (*Amnicola neomexicana*), was proposed as an endangered species on April 28, 1976 (41 FR 17742). The basis for the proposal was a report by Landye (1973), that listed the species as presumably extinct because of capping of springs to supply the city of Socorro, New Mexico, with water. That proposal was withdrawn on December 10, 1979 (44 FR 70796), under a provision of the 1978 amendments to the Endangered Species Act of 1973, which required withdrawal of all pending proposals if they were not finalized within two years of the proposal.

In the May 22, 1984, Review of Invertebrate Wildlife for Listing as Endangered or Threatened Species (49 FR 21664), both the Socorro springsnail (*Fontelicella* (= *Amnicola) neomexicana*) and the Alamosa springsnail (*Tryonia* sp.) were included as Category 1 species. Category 1 comprises taxa for which the Service currently has substantial information on hand to support the biological appropriateness of proposing to list as endangered or threatened. In the January 6, 1989, Animal Notice of Review (54 FR 554), both the Socorro springsnail (*Pyrgulopsis neomexicana*, then called *'Fontelicella' neomexicana*) and Alamosa springsnail (*Tryonia alamosae*) were retained in Category 1.

A petition from the New Mexico Department of Game and Fish was received by the Service on November 22, 1985. It requested that 11 taxa of New Mexico molluscs be added to the List of Endangered and Threatened Wildlife, including *T. alamosae* and *P. neomexicana*. The Service made a 90-day finding that the petition presented substantial information that the requested action may be warranted, and announced the finding in the **Federal Register** on August 20, 1986 (51 FR 29671). The 12-month finding for this petition was published on July 1, 1987 (52 FR 24485), and stated that the action requested by the petitioner was warranted, but precluded by work on other species having higher priority for listing. On October 4, 1988 (53 FR 38969), and April 25, 1990 (55 FR 17475), a Notice of Findings on petitions was published. The required one-year finding on the action to list *T. alamosae* and *P. neomexicana* continued to be warranted, but precluded by work on species with higher priority for listing. A proposed rule to determine endangered status for Alamosa and Socorro springsnails was published in the **Federal Register** on September 18, 1990 (55 FR 38343).

Summary of Comments and Recommendations

In the September 18, 1990 proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices were published in the Albuquerque Journal on October 19, 1990, the Tribune on October 19, 1990, and the Defensor Chieftain on October 22, 1990, which invited general public comment. One comment supporting the listing of both snails was received.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that Alamosa and Socorro springsnails should be classified as an endangered species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be 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 Socorro springsnail (*Pyrgulopsis neomexicana*) and Alamosa springsnail (*Tryonia alamosae*) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

The limited range of these species makes them extremely vulnerable to loss or alteration of their specialized habitat. *Pyrgulopsis neomexicana* is limited to a single pool less than 1 m^2 in area, and an outflow ditch about 2.5 meters (8 feet) long. *Tryonia alamosae* is found in several springs, the largest of which is 2×3 meters (6×10 feet) across and 0.3–0.6 meters (1–2 feet) deep. The species also is found in four smaller springs and an outflow that is 0.6–1.0 meters (2–4 feet) wide. Any conditions that would lessen the flow of water from the springs would threaten the species, which are dependent upon continuous surface flows.

Under the present system of use in the spring complex that contains *T. alamosae*, water is allowed to flow from the springs through a canyon and then diverted for irrigation use. The snail populations are secure under this system of use. However, should changes occur to this system, and as a result the flow from the springs diminish, or stopped, the snails would suffer. These springs are the water supply for agriculture and villages downstream near Monticello, New Mexico. Possible future development of the springs to maximize water supply is a potential threat.

The springs that contain *P. neomexicana* have been impounded, eliminating the critical flowing-water habitat of the principal sources. One free-running spring remains, with an improved source pool less than one meter in diameter and an outflow stream less than 2.5 meters (8 feet) long that includes the only known population of this species, with about 5,000 individuals (Taylor 1983). Loss of flow caused by pumping and pollution of the spring are additional threats to this habitat.

The springs in which *T. alamosae* occurs are used by people for bathing. Channel modifications to make pools have destroyed snail habitat and caused erosion.

Cattle grazing and roiling of the water by cattle may have a negative impact on *P. neomexicana*. Grazing of the area in which *T. alamosae* occurs does not appear to harm the habitat of the snail.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Because of their rarity, *T. alamosae* and *P. neomexicana* are of interest to biologists and collectors. Therefore, collection of the animals is a minor but present threat.

C. Disease or Predation

The introduction of non-native competing or predaceous organisms (including fishes) into the springs is a potential threat to *T. alamosae.*

D. The Inadequacy of Existing Regulatory Mechanisms

Both *T. alamosae* and *P. neomexicana* are protected by the State Wildlife Conservation Act, Sec. 17–2–41. Under

State law, there are prohibitions against destruction of the snails and excessive collecting, but the ability to protect habitat is limited. Listing these species under 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

Vandalism to the springs, both intentional and inadvertent, is a threat to these two species. Loss of the organic film or other natural elements in the springs that support *T. alamosae* and *P. neomexicana* would have detrimental effects on both species. Both species are restricted to such small habitats that they are extremely vulnerable to extinction from any of the factors discussed above.

The Service as carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Pyrgulopsis neomexicana* and *Tryonia alamosae* as endangered without critical habitat. Threatened status would not be appropriate for these species because they both are extremely restricted in distribution and are vulnerable to the threats described above. The present situation of both species is precarious. Even minor improvement of one tiny spring could wipe out one of the species entirely. Critical habitat is not being proposed for the reasons discussed below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, that the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not presently prudent for these species. Survival of the Socorro springsnail and the Alamosa springsnail is completely dependent upon the protection of the springs and the outflows that the species now occupy. Vandalism to the springs could extirpate the species. Collection for scientific purposes is a potential threat to these species. Publication of critical habitat descriptions and maps would increase the vulnerability of both species to collection and vandalism without significantly increasing protection. No benefit from critical habitat designation has been identified that outweighs the threat of vandalism and collection. All involved parties and principal landowners have been notified of the location and importance of protecting these species' habitats. The landowners have no objections to the listing of these species. Both species are located primarily on private lands where Federal involvement in land-use activities does not generally occur. Additional protection resulting from critical habitat designation is achieved through the section 7 Consultation Process. Since section 7 would not apply to the majority of land-use activities occurring within critical habitat, its designation would not appreciably benefit the species.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. The Service has not identified any ongoing or proposed projects with Federal involvement that could affect these species.

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.

National Environmental Policy Act

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

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Author

The primary author of this final rule is Sonja Jahrsdoerfer, U.S. Fish and Wildlife Service, 222 South Houston, suite A, Tulsa, Oklahoma 74127 (918/581–7458 or FTS 745–7458).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulation promulgation.

PART 17—[AMENDED]

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

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

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.11(h) by adding the following, in alphabetical order under "Snails," to the list of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		
SNAILS							
*	*	*	*	*	*		
Springsnail, Alamosa	*Tryonia alamosae*	U.S.A. (NM)	NA	E	442	NA	NA
Springsnail, Socorro	*Pyrgulopsis neomexicana*	U.S.A. (NM)	NA	E	442	NA	NA
*	*	*	*	*	*		

Dated: September 23, 1991.

Bruce Blanchard,

Director, Fish and Wildlife Service.

[FR Doc. 23460 Filed 9–27–91; 8:45 am]

BILLING CODE 4310–55–M

50 CFR Part 17

RIN 1018–AB36

Endangered and Threatened Wildlife and Plants; Endangered Status for Six Foreign Reptiles

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines endangered status for six foreign reptiles: Maria Island ground lizard, Maria Island snake, Brazilian sideneck turtle, Cat Island turtle, Inagua Island turtle, and South American red-lined turtle. All occupy very restricted ranges and are jeopardized by human habitat disruption and/or direct killing. This rule will implement the protection of the Endangered Species Act of 1973 for these six reptiles.

EFFECTIVE DATE: October 30, 1991.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, from 8 a.m. to 4 p.m., Monday through Friday, in room 750, 4401 Fairfax Drive, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Dr. Charles W. Dane, Chief, Office of Scientific Authority; Mail Stop: Arlington Square, room 725; U.S. Fish and Wildlife Service, Washington, DC 20240 (phone 703–358–1708 or FTS 921–1708; FAX 703–358–2202).

SUPPLEMENTARY INFORMATION:

Background

In the **Federal Register** of October 5, 1984 (50 FR 39353–39354), the Fish and Wildlife Service (Service) issued a notice of review of the status of eight freshwater turtles, to help determine whether they should be proposed for classification as endangered or threatened pursuant to the Endangered Species Act of 1973, as amended (Act). It subsequently was decided to proceed with such proposal for four of these turtles: Brazilian sideneck turtle (*Phrynops hogei*), Cat Island turtle (then known as *Trachemys terrapen felis*), Inagua Island turtle (*Trachemys stejnegeri malonei*), and South American red-lined turtle (*Trachemys scripta callirostris*). The proposal was published in the **Federal Register** of April 25, 1990 (55 FR 17469–17473). This proposal also covered two additional reptiles: Maria Island ground lizard (*Cnemidophorus vanzoi*) and Maria Island snake (*Liophus ornatus*).

The Maria Island ground lizard is now restricted to the islets of Maria Major and Maria Minor, off of the island of St. Lucia in the Caribbean, where it was discovered in 1958 (Baskin and Williams 1966). It probably was exterminated on the mainland of St. Lucia through predation by rats and mongooses. Mature lizards measure 10 to 15 inches (25 to 38 centimeters) long and are an olive green color, with light striping down the back and lines of blue-gray spots along the sides. Most of the early habitat descriptions indicate preference for dry coastal areas with grass and prickly pear cactus (Long 1974).

The Maria Island snake also originally was found on St. Lucia. It has been extirpated from that island for most of the 20th century and was thought to be extinct until rediscovered in 1973 on Maria Major, an islet off the southeastern coast of St. Lucia. Adults attain lengths of 3 feet (one meter) and are colored black to olive-brown, with a distinct but somewhat variable white/yellow zig-zag pattern of dots and broken lines continuing to the tail (Dixon 1981). The current habitat of the species on Maria Major is primarily xeric rocklands with scattered trees and vines, and small grass and cactus meadows (Corke 1983).

First described in 1967, the Brazilian sideneck turtle is a rare native of the Rio Paraiba and Rio Itapemirim drainages in southeastern Brazil (Mittermeier *et al.* 1980). It apparently occupies a restricted range below 1,650 feet (500 meters) in the states of Rio de Janeiro, Minas Gerais, and southern Espirito Santo (Rhodin *et al.* 1982). Its carapace is domed and elongated, generally measures 9 to 13 inches (23 to 34 centimeters) long, lacks any keel or medial groove, and may vary in color from light to dark brown (Ernst and Barbour 1989). Very little ecological research has been done on this species, but other members of the genus are primarily carnivorous, subsisting on insects, larvae, and small fish, supplemented by available fruit (Rhodin *et al.* 1982).

The Cat Island turtle originally was considered a full species, *Pseudemys felis* (Barbour 1935), and subsequently was regarded as the subspecies *Trachemys terrapen felis* (Seidel and Adkins 1987), but may actually be only a population of *T. terrapen* restricted to Cat Island in the Bahamas (see below). Adults are inconspicuous, with the carapace varying in color from grayish brown to yellowish olive and being approximately 10 to 13 inches (25 to 32 centimeters) long (Ernst and Barbour 1989). Juveniles make more attractive pets, because their stripes and plastral markings are more distinct. This turtle generally lives in or around ephemeral freshwater ponds, as available, and persists through dry periods by burrowing into the remaining muck and leaf litter of former ponds. It is fond of basking when freshwater is not limited, a behavioral trait that aids in its capture. The diet is apparently omnivorous, but there is a strong preference for custard apples, a local wild fruit.

The Inagua Island turtle, found only on Great Inagua Island in the Bahamas, formerly was considered to be a full species, *Pseudemys malonei* (Barbour and Carr 1938), but now is regarded as a subspecies of the Central Antillean slider (Seidel 1988). It has a variable green-brown, oval, high-domed carapace, up to 9.5 inches (24 centimeters) long; gray to olive skin; a blunt to rounded snout; and either a solid yellow or dark-seamed plastron. The subspecies inhabits freshwater ponds, rivers, streams, or swamps, with soft bottoms and abundant aquatic vegetation (Ernst and Barbour 1989). It feeds on vegetation, preferably fruit, supplemented with insects and occasionally fish (Barbour and Carr 1938).

The colorful Colombian slider, or South American red-lined turtle, once was common to Caribbean drainages in northern Colombia and northwestern Venezuela. Named for the bright red postorbital stripe on its head, it is a very attractive reptile and has appeared regularly in the European pet trade for many years (Pritchard 1979). The carapace is a weakly keeled oval with a slightly serrated posterior rim, and is 8 to 24 inches (20 to 60 centimeters) long. The ground color on adults is olive to brown, but the shell is also highly patterned with yellow bars and ocelli, as well as green and black concentric circles. The plastral configuration is equally decorative. Hatchlings are brighter, the ground color being emerald green upon emergence. The color and patterning of juveniles inspires local people to gather large numbers for eventual sale as dried trinkets (Groombridge 1982). This turtle prefers quiet, soft-bottomed waters with plenty of aquatic plants and basking sites. Reports regarding diet vary, but indicate that individuals or geographic populations may display vegetarian, omnivorous, or even predatory and carnivorous feeding behavior.

Summary of Comments and Recommendations

In the proposed rule of April 25, 1990, and associated notifications, all interested parties were requested to submit information that might contribute to development of a final rule. Cables were sent to United States embassies in countries within the ranges of the subject species, requesting new data and the comments of the governments of those countries. Six comments were received, all supportive and some providing new information that is discussed below. However, two of the comments pointed out that the new studies by Seidel (1988) indicate that the Cat Island turtle is not a separate subspecies (*Trachemys terrapen felis*) as proposed, but is a population of *Trachemys terrapen*, which otherwise is found on Jamaica and Eleuthera Island in the Bahamas. Seidel (1988) suggested that populations of *T. terrapen* in the Bahamas are the result of human introduction, but he also noted that the recent discovery of late Pleistocene fossils on the island of San Salvador, only 42 miles (70 kilometers) from Cat Island, may substantiate the presence of *Trachemys* in the area prior to the arrival of people. While the taxonomic issue thus is in doubt, there seems no question of the deteriorating status of the Cat Island turtle, and the Service has decided to proceed with its classification as endangered, but will treat it as a distinct vertebrate population segment pursuant to section 3(16) of the Act.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the six reptiles named above should be classified as endangered. Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the six reptiles named above are as follows.

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

The riverine habitat of the Brazilian sideneck turtle has undergone extensive deforestation in the past 20 years. The banks and marshes of the Rio Itapermirim and Rio Paraiba drainages are no longer suitable for freshwater turtle habitation or reproduction. Periodic field collections of specimens for taxonomic studies have failed to obtain any juvenile samples (Russell Mittermeier, State University of New York, pers. comm.).

The remaining habitat of the Cat Island turtle is small and subject to development and disturbance by road construction (Groombridge 1982). According to Bostock 1987), only a single site supporting a population remains undisturbed by people. The seven other areas with populations have been degraded by agricultural burning or excessive human use. The total number of individuals appears to have declined since a survey in 1983. Surveys conducted in 1987 resulted in the capture (followed by release) of fewer than 350 turtles. In its response to the proposed rule, the Bahamas National Trust estimated total current numbers at 300 to 1,500 and indicated that populations are slowly declining.

Much of the range of the Inagua Island turtle is within a preserve leased by the Bahamas National Trust and managed for flamingos. Solar salt-processing operations if permitted to expand, inundating some parts of the preserve would not adversely affect the flamingos or their habitat. Although the turtle is tolerant of brackish water, the high salinity of seawater is lethal. The turtle frequently resides in freshwater lenses that form when rain accumulates in ponds above the heavier saltwater from the ground. These lenses also are considered an inexpensive source of drinking water by the growing human population (1,000 or more people) on Great Inagua Island. When imported freshwater supplies are not readily available, the freshwater lenses of pools are pumped for drinking water, decreasing habitat for the turtle (Karen Bjorndahl, University of Florida, pers. comm.). In its response to the proposed rule, the Bahamas National Trust estimated current numbers of the turtle at 250 to 550 and indicated that populations are slowly declining.

In 1975, the range of the South American red-lined turtle in Colombia was reported to be restricted to the

Magdalene and Sinu' river drainages, and more recent reports indicate that the easternmost populations have been extirpated (Russell Mittermeier, State University of New York, pers. comm.); the same is suspected of populations on the western edge of this range. Populations in Venezuela may also have been extirpated, as virtually all historical habitat in that country is now occupied by petroleum facilities and storage tanks (Russell Mittermeier, State University of New York, pers. comm.). Remaining wetland habitat is being destroyed by burning and development (Groombridge 1982).

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Ross (1982) reported extensive utilization of the Cat Island turtles for food by some of the local people. Bostock (1987) found this problem to continue in northern parts of Cat Island, and also noted that hatchling turtles were being taken throughout the Island to supply a local pet trade. In its response to the proposed rule, the Bahamas National Trust considered this trade to be the main threat to the Cat Island and Inagua Island turtles.

According to information supplied by the Environmental Institute of Colombia (INDERENA) in its response to the propose rule, and by Peter Pritchard (Florida Audubon Society, pers. comm.), the South American red-lined turtle is intensively exploited for its meat and eggs. Although it is illegal, hunting is especially severe just prior to and during Holy Week, when many people do not consume mammalian flesh for religious reasons. This period comes at a time when the female turtles are laden with eggs, and thus the death of an adult may result in the direct loss of many young. Hunting also causes considerable damage to habitat, since the taking of the turtles involves burning the cover along the river banks. Within the last decade there has been a decline of 50 percent in the number of turtles and a reduction in the average size of those taken. Population structure has been modified, with a relative loss of reproductively mature animals. In addition to these other problems, many hatchlings are being collected alive for exportation or local use as pets.

C. Disease or Predation

The Inagua Island turtle is preyed upon by feral hogs, which were introduced to the island by people. (Karen Bjorndahl, University of Florida, pers. comm.). According to Corke (1983, 1987), the Maria Island snake and ground lizard probably were totally extirpated from the mainland of St. Lucia through predation by introduced rats and mongooses. They survive only in extremely restricted habitats, amounting to not more than 30 acres (12 hectares) on the two islets, Maria Major and Maria Minor. There are fewer than 1,000 of the lizards and only 50 to 100 snakes. They remain vulnerable to potential introduction of predators and other environmental disruptions (see below).

D. The Inadequacy of Existing Regulatory Mechanisms

In 1973, both of the tiny volcanic islets inhabited by the Maria Island snake and ground lizard became a nature preserve, under the control of the St. Lucia National Trust, specifically for the protection of these two species (Earl Long, Center for Disease Control, pers. comm.). In 1986, the islets were resurveyed, but no snakes were found, and only three individuals have been sighted since 1983 (Corke 1987). In his response to the proposed rule, the Director of the St. Lucia National Trust noted that while controls have been placed on the use of the islets by fishermen, there is an ever present danger to the dry, scrubby habitat from fire, and also the threat of introduction of rats and mongooses from fishing boats.

Existing regulatory mechanisms provide only limited assistance to the other reptiles covered by this rule. The Brazilian sideneck turtle is officially listed as endangered by the Brazilian government, but such classification can do little to prevent the destruction of the limited habitat of the species. According to the Bahamas National Trust, both the Cat Island and Inagua Island turtles are currently unprotected outside of preserves and are subject to collection and sale. Most of the range of the Inagua Island turtle is within a preserve created for the protection of flamingos, but there are apparently no provisions mandating that the area remain in its present state, which is a freshwater habitat suitable for the turtle (see above). In its response to the proposed rule, the Environmental Institute of Colombia (INDERENA) noted that the South American red-lined turtle is legally protected in the country, but continues to suffer severely from hunting and habitat destruction.

None of the reptiles covered by this rule is on the appendices to the Convention on International Trade in Endangered Species of Wild Fauna and Flora. There thus are no mechanisms preventing the importation of, for example, young specimens of the Cat Island, Inagua Island, or South American red-lined turtles.

E. Other Natural or Manmade Factors Affecting its Continued Existence.

All six reptiles covered by this proposal occur in such small numbers that inbreeding and loss of genetic viability could be problems. On Cat Island, land often is cleared for agricultural purposes by burning all of the existing vegetation in an area, and such activity usually results in the death of some turtles (Bostock 1987). Water pollution is a problem for the Brazilian sideneck turtle and the South American red-lined turtle. The river drainages within the ranges of both species have been virtually denuded of vegetative cover, thus promoting siltation problems. Some of these areas have been heavily industrialized in the past few decades (Russell Mittermeier, State University of New York, pers. comm.).

The decision to determine endangered status for the Maria Island ground lizard, Maria Island snake, Brazilian sideneck turtle, Cat Island turtle, Inagua Island turtle, and South American red-lined turtle was based on an assessment of the best available scientific information, and of past, present, and probable future threats to these reptiles. All six have experienced significant declines in population numbers in recent years and are vulnerable to human exploitation and disturbance. If conservation measures are not implemented, further declines are likely to occur, increasing the danger of extinction for these reptiles. Critical habitat is not being determined, as such designation is not applicable to foreign species.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened pursuant to the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages conservation measures by Federal, international, and private agencies, groups, and individuals.

Section 7(a) of the Act, as amended, and as implemented by regulations at 50 CFR part 402, requires Federal agencies to evaluate their actions that are to be conducted within the United States or on the high seas, with respect to any species that is proposed or listed as endangered or threatened and with respect to its proposed or designated critical habitat (if any). Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species

or destroy or adversely modify its critical habitat. If a proposed Federal action may affect a listed species, the responsible Federal agency must enter into formal consultation with the Service. No such activities are currently known with respect to the species covered by this rule.

Section 8(a) of the Act authorizes the provision of limited financial assistance for the development and management of programs that the Secretary of the Interior determines to be necessary or useful for the conservation of endangered species in foreign countries. Sections 8(b) and 8(c) of the Act authorize the Secretary to encourage conservation programs for foreign endangered species, and to provide assistance for such programs, in the form of personnel and the training of personnel.

Section 9 of the Act, and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, (within the U.S. or on the high seas), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any endangered wildlife. It also is illegal to possess, sell, deliver, transport, or ship any such wildlife that has been taken in violation of the Act. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22. Such permits are available for scientific purposes, to enhance propagation or survival, or for incidental take in connection with other such lawful activities. All such permits must also be consistent with the purposes and policy of the Act, as required by section 10(d).

International trade in these six reptiles is expected to be minimal, with the possible exception of movement of the young of certain turtles, as noted above. In any case, the Service will review these species to determine whether any of them should be placed on the Annex of the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere, which is implemented through section 8A(e) of the Act, and whether they should be considered for other appropriate international agreements, including the Convention on International Trade in Endangered Species of Wild Fauna and Flora and the Cartagena Convention's Protocol for Specially Protected Areas and Wildlife.

National Environmental Policy Act

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

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Author

The primary authors of this rule are Ronald M. Nowak and Linda Coley, Office of Scientific Authority, U.S. Fish and Wildlife Service, Washington, DC 20240 (phone 703–358–1708 or FTS 921–1708).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation, and Wildlife.

Regulations Promulgation

PART 17—[AMENDED]

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is hereby amended as set forth below:

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

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Public Law 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amended § 17.11(h) by adding the following, in alphabetical order under Reptiles, 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						
REPTILES							
Lizard, Maria Island ground	Cnemidophorus vanzoi	West Indies: St. Lucia (Maria Islands).	Entire	E	443	NA	NA
Snake, Maria Island	Liophus ornatus	West Indies: St. Lucia (Maria Islands).	Entire	E	443	NA	NA
Turtle, Brazilian (=Hoge's) sideneck.	Phrynops hogei	Brazil	Entire	E	443	NA	NA
Turtle, Cat Island	Trachemys terrapen	West Indies: Jamaica, Bahamas.	Cat Island in the Bahamas.	E	443	NA	NA
Turtle, Inagua Island	Trachemys stejnegeri malonei.	West Indies: Bahamas (Great Inagua Island).	Entire	E	443	NA	NA
Turtle, South American red-lined.	Trachemys scripta callirostris.	Colombia, Venezuela	Entire	E	443	NA	NA

Dated: September 24, 1991.

Sam Marler,

Acting Director.

[FR Doc. 91-23461 Filed 9-27-91; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB38

Endangered and Threatened Wildlife and Plants; Threatened Status for the Gulf Sturgeon

AGENCIES: Fish and Wildlife Service, Interior, and National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: The Service determines the Gulf sturgeon (*Acipenser oxyrhynchus desotoi*) to be a threatened species, pursuant to the Endangered Species Act of 1973 (Act), as amended. This rule has been coordinated with NOAA and they have cosigned the document. This large fish ranges from Lake Pontchartrain in Louisiana to Tampa Bay in Florida. Gulf sturgeon stocks have been greatly reduced or extirpated throughout much of the historic range by overfishing, dam construction and habitat degradation. This action will implement the protection and recovery provisions afforded by the Act for the Gulf sturgeon.

EFFECTIVE DATE: October 30, 1991.

ADDRESSES: The complete files for this rule are available for inspection, by appointment, during normal business hours at the Jacksonville Field Office, U.S. Fish and Wildlife Service, 3100 University Boulevard South, suite 120, Jacksonville, Florida 32216.

FOR FURTHER INFORMATION CONTACT: David J. Wesley, Field Supervisor, at the above address (telephone 904/791-2580 or FTS 946-2580).

SUPPLEMENTARY INFORMATION:

Background

The Gulf sturgeon (*Acipenser oxyrhynchus desotoi*), also known as the Gulf of Mexico sturgeon, is a subspecies of the Atlantic sturgeon (*Acipenser oxyrhynchus*). The Gulf sturgeon was described by Vladykov in 1955. It is a large, nearly cylindrical fish with an extended snout, vertical mouth, chin barbels, and with the upper lobe of the tail longer than the lower. Adults range from 1.8-2.4 meters (6-8 feet) or more in length, with adult females larger than males. The skin is scaleless, brown dorsally and pale ventrally, and imbedded with five rows of bony plates. The Gulf sturgeon has a longer head, pectoral fins, and spleen than the related Atlantic sturgeon (Huff 1975, Wooley 1985).

The following information is derived primarily from Barkuloo (1988). Historically, the Gulf sturgeon occurred from the Mississippi River to Tampa Bay, Florida. It still occurs, at least occasionally, throughout this range, but in greatly reduced numbers. The fish is essentially confined to the eastern Gulf of Mexico, possibly because this portion of the Gulf has predominately hard bottoms that are better suited to the Gulf sturgeon's feeding habits. (The western Gulf has mostly mud, clay, and silt bottom sediments.) Adult fish are bottom feeders, eating primarily invertebrates, including brachiopods, insect larvae, mollusks, worms, and crustaceans. Gulf sturgeon are anadromous, with reproduction occurring in fresh water but with most adult feeding taking place in the Gulf of Mexico and its estuaries. The fish probably return to breed in the same river system in which they hatched. Adult sturgeon enter the Apalachicola and Suwannee River Systems from February through April. Spawning is believed to occur in areas of deep water and clean (rock, gravel, or sand) bottoms. The eggs are sticky and adhere in clumps or strings to snags, outcroppings, or other clean surfaces. Larvae have been collected in April and May in the Apalachicola River. Adults remain in fresh water as late as November. The adults lose weight while in fresh water but regain it while wintering in estuaries or the Gulf of Mexico. In the Suwannee River, Florida, female sturgeon require 8 to 12 years, and males 7 to 10 years, to reach sexual maturity (Huff 1975). The Gulf sturgeon, therefore, is a slow-maturing, long-lived fish.

The Gulf sturgeon has historically been of commercial importance, with the eggs used for caviar, the flesh for smoked fish, and the swim bladder yielding isinglass, a gelatin used in food products and glues. Available landing

records for Gulf sturgeon indicate that the principal historic fisheries were in Florida and Alabama, with little directed fishing in the other Gulf States; mainly by-catch from other fishing. In Florida, recorded catches peaked about the turn of the century, and while fluctuating over the years, have decreased drastically since that time. The decline was initially due to overfishing, but subsequent dam construction has impacted habitat and eliminated or seriously reduced some populations in more recent years.

Service involvement with the Gulf sturgeon began with monitoring and other studies of the Apalachicola River population by the Service's Panama City, Florida, Fisheries Assistance Office in 1979. The fish was included as a category 2 species in the Service's December 30, 1982 (47 FR 58454), and September 18, 1985 (50 FR 37958), vertebrate review notices, and in the January 6, 1989 (54 FR 554), animal notice of review. These notices indicated that the Gulf sturgeon was a species for which listing as threatened or endangered was possibly appropriate. In 1980, the Service's Jacksonville, Florida, Area Office contracted a status survey report on the Gulf sturgeon (Hollowell 1980). The report concluded that the fish had been reduced to a small population due to overfishing and habitat loss, and that any further adverse changes would make its survival questionable. In 1988, the Panama City, Florida, Office completed a report (Barkuloo 1988) on the conservation status of the Gulf sturgeon, recommending that the subspecies be listed as a threatened species pursuant to the Act. The Service proposed the Gulf sturgeon for listing as a threatened species on May 2, 1990 (55 FR 18357).

Subsequent to publication of the proposed rule, Service contacts with agencies and individuals working on conservation of the Gulf sturgeon indicated that it would be in the best interest of the species to increase post listing regulatory flexibility relative to Service permitting requirements. The Endangered Species Act allows such flexibility in the case of species that are classified as threatened. Accordingly, a special rule has been added to allow taking of the Gulf sturgeon for certain purposes without a Federal permit, provided that the taking is done in accordance with applicable State fish and wildlife conservation laws and regulations.

The Service and the National Marine Fisheries Service (NMFS) executed a Memorandum of Understanding (MOU) in 1974 regarding jurisdictional responsibilities and listing procedures under the Endangered Species Act. Based upon the terms of the MOU, the Service has determined, for purposes of this final rule, that it has jurisdictional authority to list this species because the Gulf sturgeon spends the majority of its lifespan in fresh water. However, the NMFS also claims jurisdiction, contending that the Presidential Reorganization Plan No. 4 of 1970 clearly placed anadromous fish under NMFS jurisdiction, and, thus the intended scope of the MOU did not include anadromous fish.

Although the agencies intend to resolve this disagreement in the future, both agree that it is in the best interest of the Gulf sturgeon to list the subspecies without further delay. Until the jurisdictional issue is resolved, the Service will be responsible for the Gulf sturgeon once the listing becomes effective. Both agencies have signed this rule to eliminate confusion while the issue of jurisdiction is under review.

Summary of Comments and Recommendations

In the May 2, 1990, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices were published in the Mobile, Alabama, "Press Register" on May 19, 1990; in the Atlanta, Georgia, "Constitution" on May 20, 1990; in the Tallahassee, Florida, "Democrat" on May 22, 1990; in the New Orleans, Louisiana, "Times-Picayune" on May 22, 1990; and in the Jackson, Mississippi, "Clarion-Ledger" on June 4, 1990.

Nine comments were received during the comment period. The proposal was supported by the Alabama Department of Conservation and Natural Resources; the Mississippi Department of Wildlife, Fisheries, and Parks; Florida's Marine Fisheries Commission, Department of Natural Resources, and Game and Fresh Water Fish Commission; and a representative of a private conservation foundation.

Mississippi commented that the proposed rule was misleading in stating that the Gulf sturgeon was essentially confined to the eastern Gulf and in implying that the only viable populations remained in Florida. They pointed out that a potentially healthy population still exists in the Pearl River, and that spawning areas were still available in the lower 150 miles of the Pearl River, including some tributaries. They further stated that a sturgeon fishery existed on the Pascagoula River in the early twentieth century, and that additional survey work should be done in Mississippi rivers. Service response: The eastern Gulf of Mexico distribution referred to in the proposed rule meant that the Gulf sturgeon was essentially restricted to rivers east of the Mississippi, not that the species was restricted to Florida. Historical catch data, however, do indicate that Florida supported the largest part of the distribution. This final rule has incorporated the additional information provided by Mississippi. The Service agrees that further survey work will be necessary to determine the status of the Gulf sturgeon in several of the Gulf coast rivers, but believes that sufficient evidence exists to indicate that the subspecies is threatened over most, if not all, of its range.

The Louisiana Department of Wildlife and Fisheries stated that the Gulf sturgeon was formerly found in the Pearl River and the major Lake Pontchartrain tributaries, but that the current status was unknown. They reported that the Louisiana Wildlife and Fisheries Commission had closed all Louisiana waters to taking of sturgeon effective May 20, 1990.

A private individual expressed concern about potential economic effects of the listing, particularly with regard to interfering with commercial fishing. Service response: Section 4(b) of the Act requires that listing decisions be made solely on the basis of the best available scientific and commercial data; economic factors may not be considered. Nonetheless, the Service does not anticipate that the listing of the Gulf sturgeon will impede commercial fishing. Take of the fish is already prohibited by Louisiana, Mississippi, Alabama, and Florida. Existing Federal (National Marine Fisheries Service) regulations currently require the use of turtle excluder devices (TEDs) by shrimpers, and potential future requirements to reduce the incidental finfish catch should also reduce the incidental take of Gulf sturgeon.

The Lower Mississippi Division of the U.S. Army Corps of Engineers indicated a number of civil works projects that would require coordination with the Fish and Wildlife Service. Service response: The Fish and Wildlife Service has already conferred with, and will now consult with Federal agencies pursuant to activities that may affect the Gulf sturgeon, as required by section 7 of the Act.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the Gulf sturgeon should be classified as a threatened species. Procedures found at Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.* and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Gulf sturgeon (*Acipenser oxyrhynchus desotoi*) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

The Gulf sturgeon formerly ranged from the Mississippi River eastward to the Tampa Bay area on the west coast of Florida. Three major rivers (the Pearl in Mississippi, the Alabama in Alabama, and the Apalachicola in Florida) within the range of the Gulf sturgeon have been dammed, preventing use of upstream areas for spawning. The Gulf sturgeon is apparently unable to pass through dam systems. The Ross Barnett Dam near Jackson, Mississippi, prevents sturgeon movement further upstream, although sturgeon still have access to the lower 240 kilometers (150 miles) of the Pearl, and the tributaries in that area. Substantial spawning habitat remains in the Pearl and large tributaries like the Bogue Chitto and Strong Rivers (Mississippi Department of Wildlife, Fisheries, and Parks, *in litt.* 1990). Wooley and Crateau (1985) estimated that construction of the Jim Woodruff Lock and Dam on the Apalachicola River in the 1950's restricted Gulf sturgeon to 172 kilometers (107 miles) of the 1,018 kilometers (636 miles) of river habitat formerly available in the Apalachicola-Chattahoochee-Flint River System. Prior to dam construction, the Gulf sturgeon used all three rivers; subsequently the fish has been restricted to that portion of the Apalachicola River below the dam. Even if the Jim Woodruff Dam could be passed by Gulf sturgeon, the tributaries of the Apalachicola have many additional dams; 14 on the Chattahoochee and three on the Flint. A breeding population of Gulf sturgeon in Bear Creek, Bay County, Florida, was apparently extirpated due to construction of a dam in 1962.

In addition to the structures preventing Gulf sturgeon from reaching spawning areas, dredging, desnagging, and spoil deposition carried out in connection with channel improvement and maintenance represent a threat to the Gulf sturgeon. Although precise spawning areas are not known, indications are that deep holes and rock surfaces are important for spawning. Modification of such features, especially in rivers in which upstream migration is already limited by dams, could further jeopardize the already reduced stocks of the Gulf sturgeon.

The majority of the range of the Gulf sturgeon is along the panhandle and northwest peninsular coasts of Florida. Tampa Bay, Florida, was the site of the first significant fishery for the Gulf sturgeon. Fifteen hundred fish were taken when the fishery began in 1886–1887, 2,000 in 1887–1888, and only seven fish in 1888–1889, at which time the fishery ended. Only occasional Gulf sturgeon have been taken there since that time. These are believed to originate in other river systems; the Tampa Bay breeding population is considered extirpated.

The Apalachicola River population of the Gulf sturgeon supported a major fishery at the beginning of the century, but population estimates from 1983–1988 by the Service's Panama City, Florida, Fisheries Assistance Office range from 60–285 fish. Any additional decline in this population could result in its extirpation. The Ochlockonee River supported a fishery until the 1950's, but no Gulf sturgeon have been reported there in recent years.

The Suwannee River is believed to support the healthiest remaining population of the Gulf sturgeon, and the population currently appears stable. Steve Carr (in Barkuloo 1988) of the Caribbean Conservation Foundation caught and released 300 Gulf sturgeon during a tagging program in 1988, and 500 in 1989. However, the population may have been reduced seriously following a large commercial harvest in 1983–1984. the Suwannee River currently has good water quality but future development in its watershed has the potential to lower water quality there.

Gulf sturgeon populations in other states are believed to remain low following overfishing and habitat change earlier in the century. Based on the limited data available, the Gulf sturgeon is rare in these states. Incidental catches of Gulf sturgeon are unusual enough in some areas to attract newspaper accounts.

Alabama formerly supported a Gulf sturgeon fishery; commercial landing records from 1927 to 1964 show a decline from a range of 2,850–15,134 pounds taken during the first five years of the fishery (1927–1931) to 100–3,500 pounds in the last five years (1960–1964). Gulf sturgeon have been taken in the Mobile River System as recently as 1986 and 1987, but captures in coastal waters have not been reported since 1980.

In Mississippi, Miranda and Jackson (1987) collected a Gulf sturgeon from the Pascagoula River in June 1987 during 30 net-nights of effort. They reported the capture of another Gulf sturgeon on the Chickasawhay, a tributary of the Pascagoula, in 1985.

In 1988 the Louisiana Department of Wildlife and Fisheries began collecting information on Gulf sturgeon. As of March 1989, specimens had been recorded from Lake Pontchartrain (a total of six adults and subadults), Halfmoon Island (one juvenile), and the Pearl River (one adult and five juveniles). Dr. Frank Petzold of Mississippi State University caught 63 juvenile to subadult Gulf sturgeon in the Pearl River in 1985. While Miranda and Jackson took no Gulf sturgeon in that river during 46 net-nights in June 1987, Dwight Bradshaw (pers. comm.) of Mississippi State University believes that significant numbers of Gulf sturgeon remain in the Pearl.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Although there currently is no directed fishery for Gulf sturgeon, incidental take by commercial shrimpers and gill net fishermen may be significant (Wooley and Crateau 1985). Use of turtle excluder devices on shrimp trawls may help reduce incidental catch.

C. Disease or Predation

Not known to be a factor.

D. The Inadequacy of Existing Regulatory Mechanisms

The Gulf sturgeon is listed as a species of special concern by the Florida Game and Fresh Water Fish Commission (Title 39–27.05, Florida Administrative Code) and as an endangered species by the Mississippi Department of Wildlife, Fisheries, and Parks. Take is prohibited in both states. Take of Gulf sturgeon in Alabama is prohibited (Chapter 220–2–26 of Regulations of Department of Conservation and Natural Resources). On May 20, 1990, the Louisiana Wildlife and Fisheries Commission prohibited the take of all species of sturgeon in Louisiana waters. There is currently no known directed fishery for the Gulf sturgeon anywhere in its range.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Since the Gulf sturgeon is slow to mature, it is unable to rapidly establish a breeding population. The fish probably return to their natal river to breed; if so, recolonization of extirpated populations from other river systems is likely to be slow.

There is a potential threat to the Gulf sturgeon from hybridization with the white sturgeon (*Acipenser transmontanus*), a fish native to the Pacific coast of North America (Dr. James D. Williams, National Fisheries Research Center, Gainesville, Florida; pers. comm.). There have been preliminary attempts to introduce white sturgeon for aquaculture within the range of the Gulf sturgeon. Since species of *Acipenser* are capable of hybridization, any releases of white sturgeon within the range of the Gulf sturgeon could threaten the survival of the latter species.

Poor water quality may also be a threat. All major rivers in the fish's historic range have had heavy pesticide use in their watersheds, and some receive contamination from heavy metals and industrial contaminants. Several large Gulf sturgeon from the Apalachicola River have been found to have potentially detrimental levels of organochlorines and heavy metals in their tissues. While the effects of these contaminants are not certain, they are potentially detrimental to the sturgeon's survival.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list the Gulf sturgeon as threatened. The species has declined seriously throughout its range, and has been extirpated in some portions of that range. Although not yet an endangered species, it is likely to become one in the foreseeable future if further habitat loss or degradation occurs.

Critical Habitat

Section 3 of the Act defines critical habitat for an endangered or threatened species as the specific areas containing the physical and biological features essential to the conservation of the species. "Conservation" means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary. Section 4(a)(3) of the Act, requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is proposed to be endangered or threatened. Service regulations (50 CFR 424.12(a)(2)) state that critical habitat is not determinable if information sufficient to perform required analyses of the impacts of the designation is lacking or if the biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat. Section 4(b)(2) of the Act requires the Service to consider economic and other relevant impacts of designating a particular area as critical habitat on the basis of the best scientific data available. The Secretary may exclude any area from critical habitat if he determines that the benefits of such exclusion outweigh the conservation benefits, unless to do such would result in the extinction of the species.

In the May 2, 1990, proposed rule to list the Gulf sturgeon, the Service stated that designation of critical habitat was not prudent. The basis for this determination was that it would be impractical to designate critical habitat over an area as large as the Gulf sturgeon's range, especially when the exact areas utilized are not fully known. Though there are areas that likely are important to the Gulf sturgeon, they have not yet been identified. The species feeds over large areas of the Gulf of Mexico and spawns in most of the larger rivers draining into the eastern Gulf. Each major river system in the eastern Gulf is believed to support its own breeding population. The highly migratory, wide-ranging behavior of the Gulf sturgeon requires very large areas of coastal waters and these areas are not currently understood. It would be impractical to designate critical habitat over this large area and insufficient information exists to designate smaller isolated areas.

Consideration of a not prudent finding within the Service since the publication of the proposed rule has resulted in a determination that designation of critical habitat may be prudent for the Gulf sturgeon but is not now determinable. Section 4(b)(6)(C) provides that a concurrent critical habitat determination is not required, and that the final decision on designation may be postponed for 1 additional year from the date of publication of the proposed rule, if the Service finds that a prompt determination of endangered or threatened status is essential to the conservation of the species. The Service believes that prompt determination of threatened status for the Gulf sturgeon is essential. This will afford the species identify those physical and biological features that are essential to the conservation of the sturgeon and that may require special management considerations or protection and make a final decision on designation of critical habitat by May 2, 1992. In the interim, protection of this species' habitat will be addressed through the recovery process and through the section 7 jeopardy standard.

Federal agencies and activities likely to be affected by the listing of the Gulf sturgeon are discussed under "Available Conservation Measures" below.

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. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of 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.

Federal actions most likely to affect the Gulf sturgeon are the permitting programs and Federal water resource projects of the U.S. Army Corps of Engineers. Activities that would potentially involve section 7 of the Act include dredging of river channels, spoil deposition, and dam construction. Another potential section 7 involvement is pesticide registration by the U.S. Environmental Protection Agency. Following the proposal of the Gulf sturgeon as a threatened species, a

"conference" pursuant to section 7(a)(4) of the Act occurred between the Fish and Wildlife Service and the Minerals Management Service, with regard to offshore oil leasing in the Gulf of Mexico.

The Act and implementing regulations found at 50 CFR 17.21 and 17.31 set forth a series of general prohibitions and exceptions that apply to all threatened wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect; or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

The above generally applies to threatened species of fish and wildlife. However, the Secretary has the discretion under section 4(d) of the Act to issue special regulations for a threatened species that are necessary and advisable for the conservation of the species. Take of the Gulf sturgeon is now banned in all States within the historic range except Georgia, where the species has been extirpated. Conservation and restoration of Gulf sturgeon stocks is already underway or planned by a combination of Federal, State, and private agencies.

In order to avoid unnecessary duplication of permitting requirements, the Service is promulgating a special rule allowing taking of Gulf sturgeon, in accordance with applicable state laws, for educational purposes, scientific purposes, the enhancement of propagation or survival of the species, zoological exhibition, and other conservation purposes consistent with the Endangered Species Act. Taking of Gulf sturgeon for purposes other than those described above, including taking incidental to carrying out otherwise lawful activities, is prohibited except when permitted under 50 CFR 17.32. The special rule will allow conservation and recovery activities for the Gulf sturgeon to be carried out without a Federal permit, provided the activities are in compliance with applicable State laws. Federal agency conservation activities involving Gulf sturgeon, however, will require consultation pursuant to section 7 of the Act, as discussed above.

On July 1, 1975, the Atlantic sturgeon (*Acipenser oxyrhynchus*, including the Gulf sturgeon) was included in Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). The effect of this listing is that CITES permits are required before international shipment may occur. Such shipment is strictly regulated by CITES party nations to prevent effects that may be detrimental to the species' survival.

Conservation and propagation work on the Gulf sturgeon is underway by the Service's Panama City, Florida, Fisheries Assistance Office; Gainesville, Florida, National Fisheries Research Center; Welaka, Florida and Warm Springs, Georgia National Fish Hatcheries; and by the private Caribbean Conservation Corporation, funded by the Phipps Florida Foundation. The Louisiana Department of Wildlife and Fisheries has initiated status surveys for the Gulf sturgeon and plans to expand this work. The Gulf States Marine Fisheries Commission's Technical Coordinating Committee agreed in 1989 that their Anadromous Fish Subcommittee would begin preparation of a management plan for the Gulf sturgeon during 1990.

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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Barkuloo, J.M. 1988. Report on the conservation of the Gulf sturgeon. Unpublished report. U.S. Fish and Wildlife Service, Panama City, Florida. 33 pp.

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Vladykov, V.D. 1955. A comparison of the Atlantic sea sturgeon with a new subspecies from the Gulf of Mexico (*Acipenser oxyrhynchus desotoi*). J. Fish. Res. Board Canada 12(5):754–761.

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Author

The primary author of this rule is Dr. Michael M. Bentzien (see **ADDRESSES** Section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulations Promulgation

PART 17—[AMENDED]

Accordingly, 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. Amend § 17.11(h) for animals by adding the following, in alphabetical order under "Fishes" 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						
* * *	* * *	*	*	*	*		
FISHES							
* * *	* * *	*	*	*	*		
Sturgeon, Gulf	*Acipenser oxyrhynchus desotoi.*	U.S.A. (AL, FL, GA, LA, MS)	Entire	T	444	NA	17.44(v)
* * *	* * *	*	*	*	*		

3. Amend § 17.44 by adding paragraph (v) to read as follows:

§ 17.44 Special rules—fishes.

* * * * *

(v) Gulf sturgeon (*Acipenser oxyrhynchus desotoi*). (1) No person shall take this species, except in accordance with applicable State fish and wildlife conservation laws and regulations for educational purposes, scientific purposes, the enhancement of propagation or survival of the species, zoological exhibition, or other conservation purposes consistent with the Act.

(2) Any violation of applicable State fish and wildlife conservation laws or regulations with respect to taking of this species is also a violation of the Endangered Species Act.

(3) No person shall possess, sell, deliver, carry, transport, ship, import, or export, by any means whatever, any of this species taken in violation of applicable State fish and wildlife conservation laws or regulations.

(4) It is unlawful for any person to attempt to commit, solicit another to commit, or cause to be committed, any offense defined in paragraphs (v) (1) through (3) of this section.

(5) Taking of this species for purposes other than those described in paragraph (v)(1) of this section, including taking incidental to otherwise lawful activities, is prohibited except when permitted under 50 CFR 17.32.

Dated: August 5, 1991

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

Dated: August 13, 1991.

Michael F. Tillman,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce.

[FR Doc. 91–23462 Filed 9–27–91; 8:45 am]

BILLING CODE 4310–55–M

federal register

Monday
September 30, 1991

Part XII

Department of Transportation

Federal Aviation Administration

14 CFR Parts 21, et al.
Primary Category Aircraft; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21, 36, 43, 91, 141, and 147

[Docket No. 23345; Notice Nos. 89-7 and 89-7A]

IN 2120-AB53

Primary Category Aircraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Extension of comment period.

SUMMARY: This notice announces an extension of the comment periods on Primary Category Aircraft notice of proposed rulemaking (NPRM) (56 FR 36976, August 1, 1991) and supplemental notice of proposed rulemaking (SNPRM) (56 FR 36972, August 1, 1991). The NPRM and SNPRM were issued to solicit public comments on changes to the original NPRM of March 7, 1989, and to clarify and solicit public comments on the application of noise standards to the proposed new category of aircraft. The comment periods are being extended from September 30, 1991 to November 29, 1991.

DATES: Comments must be received on or before November 29, 1991.

ADDRESSES: Comments on the NPRM and/or SNPRM should be mailed, in triplicate, to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-10), Docket No. 23345, 800 Independence Avenue SW., Washington, DC 20591. Comments must be marked Docket No. 23345. Comments may be examined in room 915G weekdays between 8:30 a.m. and 5 p.m. except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Manuel Macedo, Aircraft Engineering Division, (AIR-110), Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, Telephone (202) 267-9566.

SUPPLEMENTARY INFORMATION: On March 7, 1989, the FAA issued Notice No. 89-7 (54 FR 9738), proposing the adoption of a new category of aircraft to be known as primary category aircraft, which would be of simple design and intended for pleasure and personal use only. As described in the notice, primary category aircraft (airplanes, gliders, rotorcraft, manned free balloons, etc.) would be unpowered or powered by a single naturally-aspirated engine having a certificated takeoff rating of 200 shaft horsepower or less, would have a maximum weight of 2,500 pounds or less, and would have an unpressurized cabin. The notice proposed to permit pilot-owners of primary category aircraft to do certain maintenance procedures, including inspections, on their own aircraft after receiving the appropriate training. The notice also proposed to permit the conversion of aircraft that are within the primary category engine and weight limits from standard category to primary category. The notice proposed to allow the use of primary category aircraft (excluding primary category-light aircraft) for pilot training, and to prohibit the use of all primary category aircraft for compensation or hire.

On August 1, 1991, the FAA issued Notice Nos. 89-7 and 89-7A, both entitled Primary Category Aircraft. The new Notice 89-7 is intended to correct statements about helicopter and airplane noise test standards in the original March, 1989 Notice 89-7. Notice 89-7A is intended to request comments on several changes from the original March, 1989 Notice 89-7. Those proposed changes are: Changing the maximum weight criteria from 2,500 to 2,700 pounds; replacing the 200-horsepower engine limitation with a 61-knot stall speed limitation for airplanes and a 6-pound per square foot limitation for rotorcraft; allowing the use of primary category aircraft for primary pilot training and for rental if the aircraft is maintained by an FAA certificated mechanic or repair station; and allowing the use of primary category aircraft that are maintained by the pilot/owner, rather than an FAA certificated mechanic or repair station, to provide limited "checkouts" for other pilots.

By letter dated August 8, 1991, the Experimental Aircraft Association (EAA) requested that the comment period on the NPRM be extended by 60 days to November 29, 1991. The EAA states that many important issues must be addressed that will require extensive evaluation and review by the aviation community. Many of the organization's members and others in the aviation community receive notification of rulemaking actions through aviation magazines. The request states that the EAA intends to publish the NPRM in its publication "Sport Aviation," and it is believed that other aviation magazines would also publish information on the NPRM. Since the magazines' articles and format are normally established 60 days prior to publication, any notification of the present comment period would be printed after the comment period expires. Thus, unless the comment period is extended, many members of the aviation public would neither be informed of nor be able to respond to the August 1, 1991 request for comments.

To better afford all interested persons the opportunity to comment, the FAA has determined that the comment periods on both notices cited above should be extended. Therefore, the comment periods on the above listed NPRM and SNPRM are extended to November 29, 1991.

Issued in Washington, DC on September 25, 1991.

Thomas E. McSweeny,

Acting Director, Aircraft Certification Service.

[FR Doc. 91-23464 Filed 9-27-91; 8:45 am]

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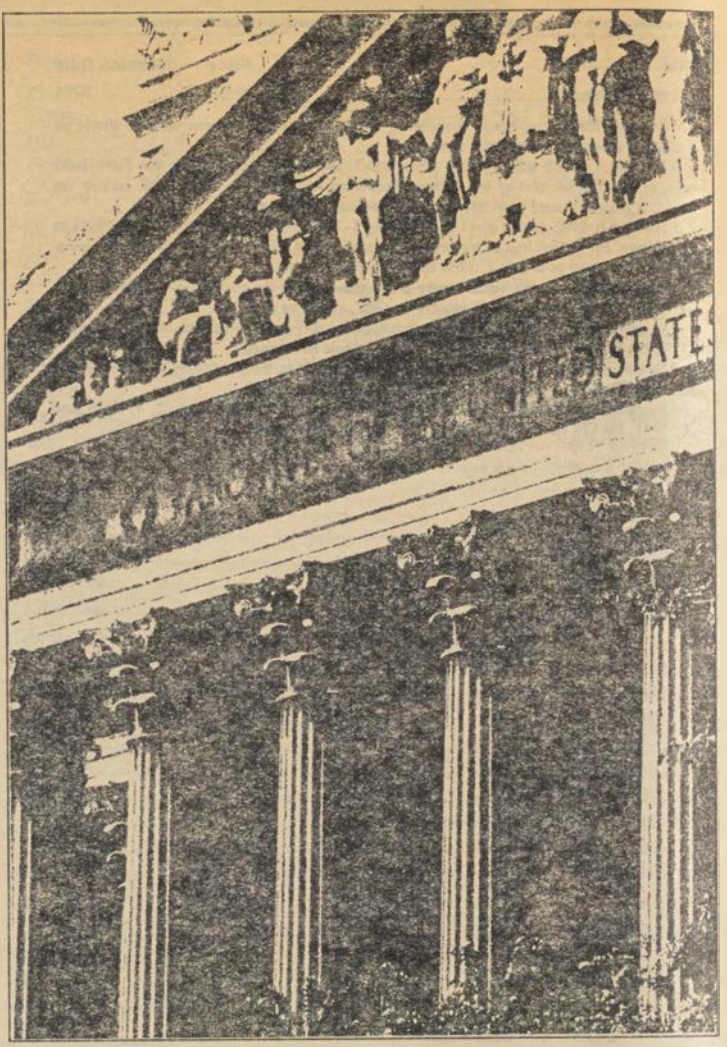

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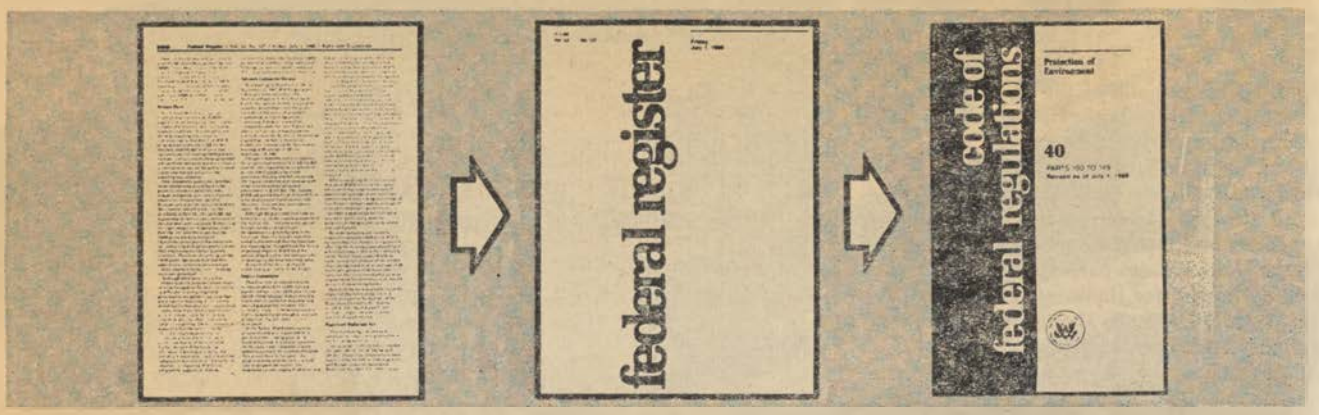

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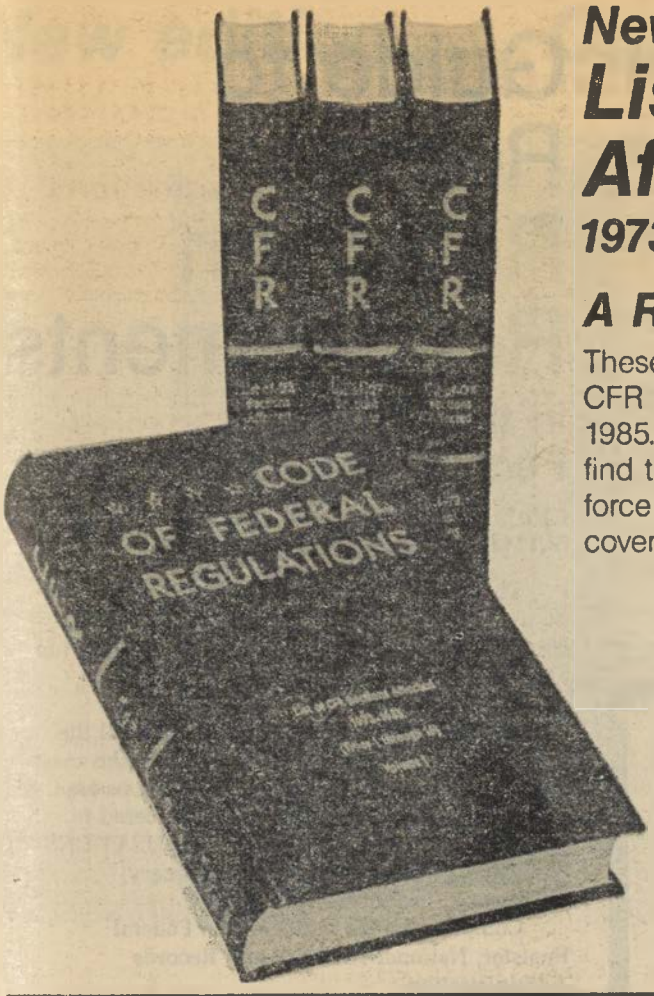

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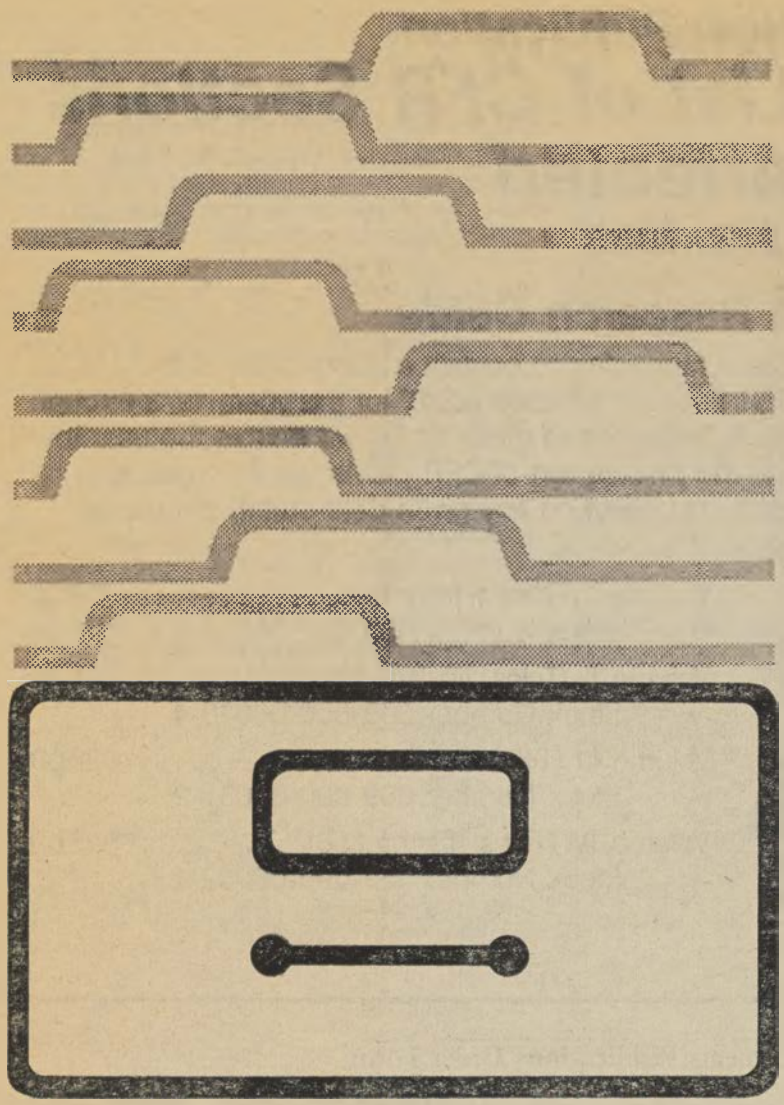

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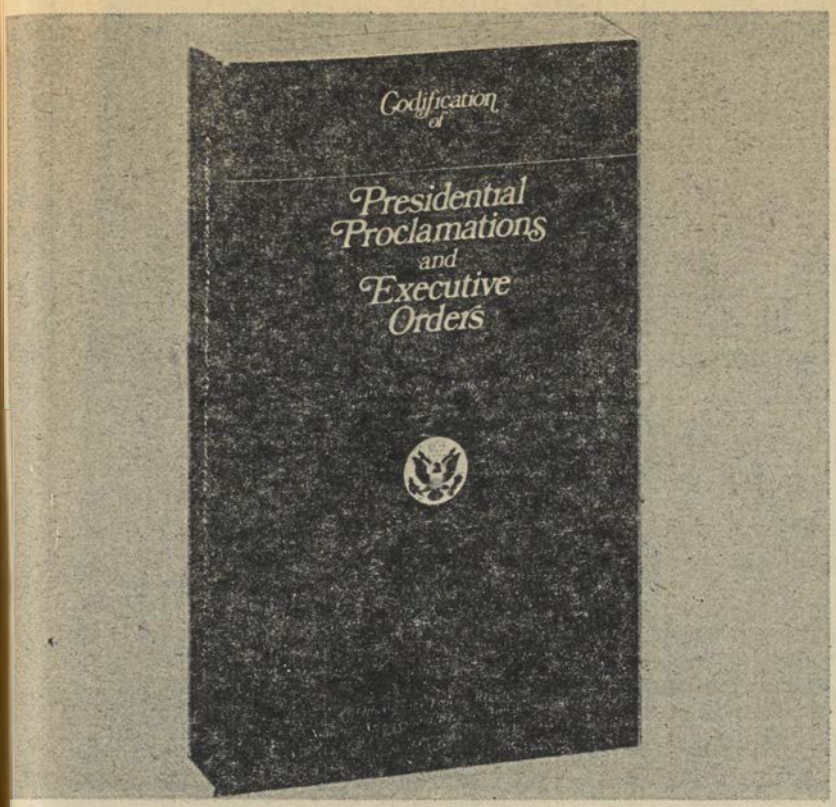

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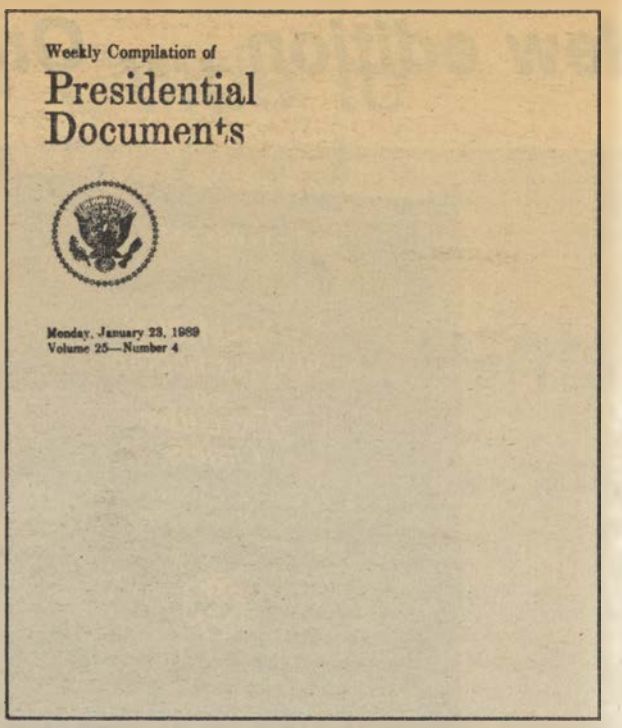

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