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

Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 400

[Doc. No. 0198S]

General Administrative Regulations; Collection and Storage of Social Security Account Numbers and Employer Identification Numbers

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) issues a new Subpart Q in chapter IV of title 7 of the Code of Federal Regulations (CFR) to provide for implementing amendments to the Federal Crop Insurance Act (FCI Act), made by the Food, Agriculture, Conservation, and Trade Act of 1990, with respect to the collection, use, and storage of Social Security Account Numbers (SSN) and Employer Identification Numbers (EIN). The intended effect of this rule is to implement rules affecting how the FCIC, direct insurance, and reinsured companies will collect, use, and store documents containing SSNs and EINs.

EFFECTIVE DATE: October 8, 1992.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 254–8314.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is May 2, 1997

James E. Cason, Manager, FCIC has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (1) An annual effect on the economy of $100 million or more; (2) major increases in costs or prices for consumers, individual industries, federal, state, or local governments, or a geographical region; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

James E. Cason, Manager, Federal Crop Insurance Corporation, certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons. The action will not have a significant economic effect on a substantial number of small entities. This program is strictly voluntary. This regulation requires only that the participant provide the SSN or EIN. This regulation does not require or impose any requirement on the delivery agent or company that is not already required by the Privacy Act of 1974 (5 U.S.C. 552a). Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act and no Regulatory Flexibility Analysis was prepared. This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials. See the Notice related to 7 CFR 3015, subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

The Manager, FCIC, has certified to the Office of Management and Budget (OMB) that these regulations meet the applicable standards provided in section 2(a) and 2(b)(2) of Executive Order 12778.

On November 28, 1990, the President signed into law the Food, Agriculture, Conservation, and Trade Act of 1990 (1990 Farm Act). The 1990 Farm Act amendments to section 506 of the FCI Act constitute the basis of this rulemaking containing the requirements for the collection and use of SSN or EINs.

Section 506 of the FCI Act (7 U.S.C. 1506), as amended, directs the FCIC to require submission of an SSN or EIN as a condition of eligibility for participation in the multiple peril crop insurance program.

Further, as allowed by the FCI Act, each policyholder will be required to notify any other individual or entity that acquires or holds a substantial beneficial interest of 5% or more in such policyholder, of the requirements of the FCI Act and, if required by the FCIC, provide to the FCIC the name and SSN or EIN of the person holding the substantial interest.

The amendments also provide that: (1) Each policyholder will be required to furnish the insuring company or the FCIC the policyholder's SSN or EIN; (2) each reinsured company will be required to furnish to the FCIC the SSN or EIN of each of its insureds whose policy is reinsured by the FCIC; and, (3) the SSN or EIN's and related records must be maintained so as to protect their confidentiality by all parties.

Further, and with respect to the applicability of these regulations to companies under an Agency Sales and Service Contract or a Standard Reinsurance Agreement, the Privacy Act of 1974 (5 U.S.C. 552a) requires at subsection (m) that:

> When an agency [FCIC] provides by a contract for the operation by or on behalf of the agency of a system of records to accomplish an agency function, the agency shall, consistent with its authority, cause the requirements of this section to be applied to such system * * * [A]ny such contractor and any employee of such contractor * * * shall be considered to be an employee of an agency.

The Privacy Act of 1974 reflects the concern of Congress over the government's potential to invade individual privacy in the name of information collecting. The principle focus of the Privacy Act, for contracting companies and reinsured companies, is on the individual's access to certain records, the limitations on disclosure of records, safeguards to protect records, and remedial measures for violations of the Act.

This regulation requires the submission of the SSN or EIN and

prescribes the procedures the FCIC will follow when participants submit their SSN or EIN to be eligible to participate in the crop insurance program. Previously, submission of SSN or EIN's was voluntary for FCIC program purposes and no penalty was imposed on participants in the crop insurance program who failed to provide this number. Under the mandate of the FCI Act, the FCIC, direct insurance, and reinsured companies will now begin collecting SSN or EIN's to identify the policyholders. The following Privacy Act Statement will be included with any document requiring an SSN or EIN by either the FCIC or the private insurance company:

Collection of Information and Data (Privacy Act)

To the extent that the information requested herein relates to the information supplier's individual capacity as opposed to the supplier's entrepreneurial (business) capacity, the following statements are made in accordance with the Privacy Act of 1974, as amended (5 U.S.C. 552(a)). The authority for requesting information to be furnished on this form is the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*) and the Federal Crop Insurance Corporation Regulations contained in 7 CFR Chapter IV.

The information requested is necessary for the insurance company and the Federal Crop Insurance Corporation (FCIC) to process this form to provide insurance, provide for reinsurance, determine eligibility, determine the correct parties to the agreement or contract, determine and collect premiums, and pay indemnities. Collection of the Social Security Account Number (SSN) or the Employer Identification Number (EIN) is authorized by section 506 of the Federal Crop Insurance Act (7 U.S.C. 1506), as amended by the Food, Agriculture, Conservation, and Trade Act of 1990 (1990 Farm Act) (Pub. L. 101–624, 104 Stat. 3359), and is required as a condition of eligibility for participation in the Federal Crop Insurance program. The primary use of the SSN or EIN is to correctly identify you as a policyholder within the systems maintained by the Corporation. Failure to furnish that number will result in you being denied program participation and benefits. Furnishing the information required by this form is voluntary; however, failure to furnish the correct, complete information requested may result in rejection of this form, rejection of any claim for indemnity, ineligibility for insurance, and a unilateral determination of the amount of premium due.

The information furnished on this form may be used by federal agencies, FCIC employees, and contractors who require such information in the performance of their duties. The information may be furnished to: FCIC contract agencies, employees, and loss adjusters; reinsured companies; other agencies within the United States Department of Agriculture the Internal Revenue Service; the Department of Justice, or other federal or State law enforcement agencies; credit reporting agencies and collection agencies; other federal agencies as requested in computer matching programs, and in response to judicial orders in the course of litigation.

Pursuant to the FCI Act, FCIC exercises its right to require those holding 5% or more interest in such policyholders to supply their SSN or EIN to the FCIC, direct insurance, or reinsured company.

Furthermore FCIC, will; (1) maintain a system of records (for the FCIC, direct insurance, and reinsured companies); (2) collect, use, and store SSN and EINs; (3) clarify the FCIC's and the government contracting agents' authority to use and disclose SSN and EINs and (4) describe the procedures to be used to destroy or discontinue use of EIN and SSNs.

On Thursday, July 9, 1992, FCIC published a notice of proposed rulemaking in the **Federal Register** at 56 FR 30430, proposing rules affecting how the FCIC, direct insurance and reinsured companies will collect, use, and store documents containing Social Security Account Numbers and Employer Identification Numbers.

Following publication of the proposed rule, the public was given 15 days to submit written comments, data, and opinions. Comments were received from insurance companies and their legal representatives.

A summary of concerns and comments addressed to FCIC during the comment period is as follows:

1. *Comment:* Clarification was requested for the procedures of following the rule and penalties under civil sanctions which could imposed.

FCIC Response: The sanctions which may be imposed for failure to follow the requirements are statutory and will be contained in procedures and as warnings on documents which will contain the EIN and SSN. These sanctions range from denial of insurance for failure to supply your SSN or EIN on the application to criminal penalties under 18 U.S.C. 1014 if an individual gives a false number with the intent of obtaining benefits under the program to which they are not entitled.

2. *Comment:* Clarification of those authorized by law to collect Social Security and Employer Identification Numbers was requested.

FCIC Response: The Manager has the statutory authority to collect Social Security and Employer Identification Numbers and may delegate this authority. This rule serves as the Manager's delegation of authority to officers or employees of FCIC, and private insurance companies whose duties and responsibilities require access to SSN or EINs in the administration of the FCI Act. It has also been made clear in the rule that authorized persons extend to auditors and investigators of the United States as well as contractors and subcontractors of the private insurance companies.

3. *Comment:* A commenter inquired if the FCI Act precludes agents and loss adjusters from access to social security numbers if those agents and adjusters are independent contractors and not employees?

FCIC Response: The rule has been changed so as to make it clear that these persons are authorized persons under the rule. Agents and loss adjusters are established as authorized persons with access to social security and employer identification numbers collected.

4. *Comment:* Since most policies by FCIC are sold under an Agency Sales and Service Contract, a commenter suggested embracing sales and service contractors in the rule.

FCIC Response: Agency sales and service contractors are private insurance companies and are subject to this rule.

5. *Comment:* FCIC's officers and employees are subject to the Department of Agriculture's Privacy Act regulations, 7 CFR 1.110 *et seq.* A commenter asked if the FCIC's employees and officers can be subject to this regulation as well as to the proposed regulation, and if both sets of regulations are consistent.

FCIC Response: FCIC officers and employees must follow both sets of regulations. FCIC's rule incorporates many stipulations of the Privacy Act. The rules should not conflict but to the extent that they do, the specific FCIC rule would control. FCIC officers and employees will follow Privacy Act guidelines as they follow FCIC's regulation.

6. *Comment:* A commenter requested that the terms "agency sales and service contractor" and "private insurance company" be defined in the rule.

FCIC Response: FCIC has defined both terms in the final rule.

7. *Comment:* A commenter suggested that the term "Government contract employees" be amended to reflect the fact that in many cases adjusters are independent contractors, not employees and to include sales agents or representatives who also are independent contractors.

FCIC Response: Independent contractors, such as loss adjusters and sales agents, are included in the category of "authorized persons" in their capacity as subcontractors to the contractor and are therefore considered "Government contract employees" within the meaning of 5 U.S.C. 552a, the Privacy Act of 1974. The rule has been revised to make this point clear.

8. *Comment:* A commenter inquired if an application for insurance could be accepted if a Social Security or Employer Identification Number is not provided.

FCIC Response: The statute requires this number before processing of any insurance application. Therefore, an applicable will not be accepted if this information is not included. The rule has been revised to make this fact clear.

9. *Comment:* If a policyholder disagrees with an adjuster's determination of production to count or redetermination of the number of acres planted or their location and the documents containing that information also contain the policyholder's social security number, does the policy holder have a new forum from appeal of the determination? Should the FCIC's proposed appeal procedures be amended to preempt and exclude this possibility?

FCIC Response: An individual has a right to appeal determinations made by FCIC. However, separate rights do not exist for each individual determination made. No new avenue of appeal is created by this system. FCIC was always required to comply with the provisions of the Privacy Act, and to the extent that rights exist under the Privacy Act that do not exist under the FCI Act, those procedures have always existed. These regulations do not create any appeal right which did not exist before.

10. *Comment.* A commenter asked why "ASCS" is mentioned in the rule § 400.410(a)).

FCIC Response: "ASCS" is mentioned in the rule because ASCS sells FCIC Crop Insurance policies.

11. *Comment* One commenter requested clarification of the parties involved in the data collection process.

FCIC Response: The final rule has been revised to clarify the identity of the parties involved in the data collection process.

12. *Comment:* A commenter asked if the statute precludes agents and loss adjusters from access to social security numbers if those agent and adjusters are independent contractors and not employees.

FCIC Response: The final rule has been revised to make it clear that subcontractors, contractors and agents are all included in the rule, and to the extent that access to information is required, are included as authorized persons.

13. *Comment:* A commenter requested an extension of the comment period for this rule.

FCIC Response: The statute is mandatory and FCIC is required to publish this rule as quickly as possible so as to require the SSN and EIN for the 1993 crop year. FCIC believes that a 15 day comment period was sufficient for the reasons set out in the proposed rule. The reason given for the extension of the comment period does not override the benefits to be obtained by implementing this rule as quickly as possible.

List of Subjects in 7 CFR Part 400

Crop Insurance; General Administrative Regulations; Collection and Storage of Social Security Account Numbers and Employer Identifications Numbers.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation (FCIC) adds a new subpart Q to its General Administrative Regulations to be known as 7 CFR part 400, subpart Q, General Administrative Regulations; Collection and Storage of Social Security Account Numbers and Employer Identification Numbers, to read as follows:

PART 400—GENERAL ADMINISTRATION REGULATIONS

Subpart Q—General Administrative Regulations; Collection and Storage of Social Security Account Numbers and Employer Identification Numbers

Sec.

Authority: 7 U.S.C. 1506, 1508.

Subpart Q—General Administrative Regulations; Collection and Storage of Social Security Account Numbers and Employer Identification Numbers

§ 400.401 Basis and purpose and applicability.

(a) The regulations contained in this subpart are issued pursuant to the Federal Crop Insurance Act, (7 U.S.C. 1501 et seq.) (FCI Act), as amended by the Food, Agriculture, Conservation, and Trade Act of 1990 (1990 Farm Act) (Pub. L. 101–624, 104 Stat. 3359), to prescribe procedures for the collection, use, and confidentiality of Social Security Account Numbers (SSN) or Employer Identification Numbers (EIN) and related records.

(b) These regulations are applicable to:

(1) All holders of all crop insurance policies issued by FCIC under the FCI Act and all private insurance companies, their contractors and subcontractors including past and present officers, agents, and employees of such companies, their contractors and subcontractors, selling and servicing such policies under an FCIC Agency Sales and Service Contract, a Loss Adjustment Contract, or some other similar contract.

(2) All holders of crop insurance policies sold by private insurance companies and reinsured by the FCIC under the provisions of an FCIC Standard Reinsurance Agreement or other FCIC reinsurance agreement; and all private reinsured companies, their contractors and subcontractors, including past and present officers and employees of such companies, their contractors and subcontractors;

(3) Any agent or company, or any past or present officer, employee, contractor or subcontractor of such agent or company, under contract to private insurance companies for loss adjustment or other purposes related to the crop insurance programs insured or reinsured by FCIC; and

(4) All past and present officers, employees, contractors, and subcontractors of the Federal Crop Insurance Corporation.

§ 400.402 Definitions.

(a) *Agency Sales and Service Contractor*—Any private insurance company selling FCIC policies (direct sales).

(b) *Access*—with respect to authorized persons, means the ability of the authorized person to read, review, or use for actions authorized under the FCI Act, the records containing the SSN or EIN.

(c) *ASCS*—Agricultural Stabilization Conservation Service, United States Department of Agriculture.

(d) *Applicant*—The person or entity that submitted the application for a crop insurance policy issued by the FCIC, or issued by a reinsured company under the FCI Act.

(e) *Authorized person*—An officer or employee of the FCIC, insurance company, reinsured company, or ASCS whose duties require access in the administration of the FCI Act.

(f) *Collection*—Act of obtaining and recording a SSN or EIN from participants in the crop insurance program.

(g) *Disposition of records*—the act performed by the insurance company or reinsured company of removing records containing a participant's SSN or EIN and disposition of such records by the insurance companies, or reinsured companies.

(h) *EIN*—a participant's Employer Identification Number required under section 6109 of the Internal Revenue Code of 1986.

(i) *FCI Act*—the Federal Crop Insurance Act as amended (7 U.S.C. 1501 *et seq.*).

(j) *FCIC*—Federal Crop Insurance Corporation.

(k) *Government contract employees*—authorized persons employed by a direct insurance or reinsured company, former officers or employees of such company, and loss adjusters.

(l) *Past officers and employees*—any officer or employee of the direct insurance company, reinsured company, or corporation who leaves the employ of such company or corporation subsequent to the official effective date of this rule.

(m) *Policyholder*—means an applicant accepted by the FCIC, the direct insurance company, or the reinsured company.

(n) *Private insurance company*—a direct insurance company selling FCIC policies under an Agency Sales and Service Contract.

(o) *Reinsured company*—a private insurance company having a Standard Reinsurance Agreement, or other reinsurance agreement, with the FCIC whose crop insurance policies are approved and reinsured by the FCIC under such agreements.

(p) *Related records*—any record, list, or compilation that indicates, directly or indirectly, the identity of any individual with respect to whom an SSN or EIN is maintained in a system of records.

(q) *Restricted access*—restricting review of all records maintained by authorized persons to only the authorized persons who need access to such records for official business under the FCI Act.

(r) *Retrieval of records*—retrieval of an individual's records by a participant's SSN or EIN.

(s) *Safeguards*—methods of security to be taken by the FCIC, the direct insurance company, and the reinsured companies to protect a participant's SSN or EIN from unlawful disclosure and access. Records containing the SSN or EIN must be secured in locked file storage, secured computer data files, or similar safe storage.

(t) *SSN*—an individuals's Social Security Number.

(u) *Storage*—the secured storing of records kept by the FCIC, direct insurance, or reinsured companies on computer diskettes (soft and hard drives), computer printouts, magnetic tape, index cards, microfiche, micro film, etc.

(v) *Substantial beneficial interest*—an interest of five percent (5%) or more in an applicant or policyholder.

(w) *System of Records*—records maintained by the FCIC, direct insurance companies, or reinsured companies from which information is retrieved by a personal identifier including the SSN, EIN, or name.

§ 400.403 Required System of Records.

Thirty days after the publication in the **Federal Register** of this rule, direct insurance companies and reinsured companies are required to implement a system of records for obtaining, using, and storing documents containing SSN or EIN data. This data should include: name; address; city and state; SSN or EIN; and policy numbers which have been used by the FCIC, the direct insurance company, or the reinsured companies.

§ 400.404 Policyholder responsibilities.

(a) The policyholder or applicant for crop insurance must provide a correct SSN or EIN to the FCIC, the direct insurance company, the reinsured company, or ASCS to be eligible for insurance. The SSN and EIN will be used by the FCIC, the direct insurance companies, and the reinsured companies in:

(1) Determining the correct parties to the agreement or contract;

(2) collecting premiums;

(3) determining the amount of indemnities;

(4) establishing actuarial data on an individual policyholder basis; and

(5) determining eligibility for program benefits.

(b) If the policyholder or applicant for crop insurance does not provide the correct SSN or EIN on the application and other forms where such SSN or EIN is required, the FCIC, direct insurance company, or reinsured company will reject the application.

(c) The policyholder is required to provide to FCIC, the insurance company, the reinsured companies, and ASCS the name and SSN or EIN of any individual or company holding or acquiring access to a substantial beneficial interest in such policyholder.

§ 400.405 Company responsibilities.

The insuring or reinsured company is required to collect and record the SSN or EIN on each application or any other form required by the FCIC.

§ 400.406 Restricted access.

The Manager, other officer, or employee of the FCIC or authorized person (as defined in § 400.402(d)) may have access to the EIN's and SSN's obtained pursuant to § 400.404 only for the purpose of establishing and maintaining a system of records necessary for the effective administration of the FCI Act in accordance with § 400.404 of this part. These numbers may be used in administering the FCI Act.

§ 400.407 Safeguards and storage.

(a) Access to records identifying an applicant's SSN or EIN is restricted as provided in § 400.406. Records must be secured in locked file storage, secured computer data files, or similar safe storage. An authorized person, as defined in § 400.402(d) must maintain hardcopy records in file folders and, when not in use, such copies must be:

(1) Locked in a cabinet or safe;

(2) On a computer accessed only through a secure computer system procedure;

(i) Locked; or

(ii) On a computer accessed only through a secure computer system procedure.

(b) Records identifying a SSN or EIN stored on computer printouts, hard or floppy diskette, microfiche, or index cards must be kept in locked file cabinets, safes, or in secured computer systems.

§ 400.408 Unauthorized disclosure.

Anyone having access to the records identifying a participant's SSN or EIN will abide by the provisions of section 205(c)(2)(C) of the Social Security Act

(42 U.S.C. 405(c)(2)(C)), and section 6109(f), Internal Revenue Code of 1986 (26 U.S.C. 6109(f) and the Privacy Act of 1974 (5 U.S.C. 552a). All records are confidential, and are not to be disclosed to unauthorized personnel.

§ 400.409 Penalties.

Unauthorized disclosure of SSN's or EIN's by any person may subject that person, and the person soliciting the unauthorized disclosure, to civil or criminal sanctions imposed under various federal statutes, including 26 U.S.C. 7613, 5 U.S.C. 552a, and 42 U.S.C. 408.

§ 400.410 Obtaining personal records.

Policyholders in the crop insurance program will be able to review or correct their records, as provided by the Privacy Act. Participants may request their records by:

(a) Mailing a written request, with their signature, to the headquarters office of the FCIC; the field office, ASCS; the direct insurance company; or reinsured company; or

(b) Making a personal visit to the above mentioned establishments and showing valid identification.

§ 401.411 Disposition of records.

The private insurance company, either direct or reinsured, will retain all records of policyholders for a period of not less than five (5) years. If a policyholder's insurance has not been renewed within a five year period from a final action on a policy (such as termination, loss adjustment, or collection), the direct insurance company or the reinsured company will transfer such records to FCIC.

§ 400.412 OMB control numbers.

The principal information collection activity associated with this rule (application) has been approved by the Office of Management and Budget (OMB) under control number 056–003. Other OMB control numbers are contained in subpart H of part 400, title 7 CFR.

Done in Washington, DC on September 9, 1992.

David L. Bracht,

Associate Manager, Federal Crop Insurance Corporation.

[FR Doc. 92–24566 Filed 10–7–92; 8:45 am]

BILLING CODE 3410–08–M

DEPARMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Department of Navy, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Judge Advocate General of the Navy has determined that USS HAYLER (DD 997) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special functions as a naval destroyer. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: September 10, 1992.

FOR FURTHER INFORMATION CONTACT: Captain R.R. Rossi, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332–2400. Telephone number: (703) 325–9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR part 706. This amendment provides notice that the Judge Advocate General of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS HAYLER (DD 997) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with the following specific rules of 72 COLREGS: That portion of Annex I section 3(a) pertaining to the placement of the forward masthead light in the forward quarter of the vessel; that portion of Annex I, Section 3(a) pertaining to the placement of the after masthead light and the horizontal distance between the forward and after masthead lights, without interfering with its special functions as a naval vessel. The Judge Advocate General of the Navy has also certified that the aforementioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine Safety, Navigation (Water), and Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR part 706 is amended as follows:

1. The authority citation for 32 CFR part 706 continues to read:

Authority: 33 U.S.C. 1605.

2. The entry for USS HAYLER (DD 997) in Table Five of § 706.2 is revised to read as follows:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

TABLE FIVE

Vessel	Number	Masthead lights not over all other lights and obstructions. Annex I sec. 2(f)	Forward masthead light not in forward quarter of ship Annex I sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light Annex I, sec. 3(a)	Percentage horizontal separation attained
* * * *	*	*	*	*	
USS HAYLER	DD 997	N/A	X	X	44
* * * *	*	*	*	*	

Dated: September 10, 1992.
Approved:
J.E. Gordon,
Rear Admiral, JAGC, U.S. Navy, Judge Advocate General.
[FR Doc. 92-24477 Filed 10-7-9; 8:45 am]
BILLING CODE 3810-AE-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD2 92-23]

Special Local Regulations: Head of the Mississippi Regatta (Mississippi River Mile 850.0 to Mile 853.0)

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: Special local regulations are being adopted for the Head of the Mississippi Regatta. This event will be held near Minneapolis, Minnesota on the Mississippi River from mile 850.0 to mile 853.0 on October 10, 1992. The regulations are needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATES: These regulations become effective on October 10, 1992 from 7:30 a.m. to 6 p.m.

FOR FURTHER INFORMATION CONTACT: Ensign D.R. Dean, Chief, Boating Affairs Branch, Second Coast Guard District, 1222 Spruce Street, St. Louis, Missouri 63103-2832. The telephone number is (314) 539-3971, Fax (314) 539-2685.

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

Drafting Information

The drafter of these regulations is Ensign D.R. Dean, Project Officer, Second Coast Guard District Boating Safety Division.

Discussion of Regulations

The Head of the Mississippi Regatta consists of rowing shell boats, starting at the south end of the course near the Lake St. Bridge and finishing upstream, just south of the N.P.R.R. trestle bridge. There will be 19 such races taking place on Saturday, October 10, 1992 between 7:30 p.m. and 6 p.m. from mile 850.0 to 853.0. These regulations are required to protect the boating public from possible dangers and hazards associated with the event. In order to provide for the safety of spectators and participants, the Coast Guard will restrict vessel movement in the regulated area. The river will be closed during portions of the effective period to all vessel traffic except participants, official regatta vessels, and patrol craft. Actual river closures will not exceed three hours in duration. Mariners will be afforded enough time between closure periods to transit the area.

These regulations are issued pursuant to 33 U.S.C. 1233 and 33 CFR 100.35.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (Water).

Regulations

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

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

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

2. A temporary section 100.35-TO223 is added, to read as follows:

§ 100.35-T0223 Head of the Mississippi Regatta.

(a) *Regulated Area.* The Mississippi River between mile 850.0 and mile 853.0

(b) *Special Local Regulations.* (1) The U.S. Coast Guard will patrol the regulated area under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on Channel 16 (156.8 MHZ) by the call sign "Coast Guard Patrol Commander". Vessels desiring to transit the regulated area may do so only with the prior approval and direction of the Patrol Commander.

(2) The Patrol Commander may direct the anchoring, mooring or movement of any vessel within the regulated area. A succession of sharp, short blasts by whistle or horn from a designated patrol vessel shall be the signal to stop. Failure or refusal to stop or comply with orders of the Patrol Commander may result in expulsion from the area, citation for failure or refusal to comply, or both.

(3) The Patrol Commander may establish vessel size, speed limitations, and operating conditions.

(4) The Patrol Commander may restrict vessel operation within the regulated area to vessels having particular operating characteristics.

(5) The Patrol Commander may terminate the marine event or the operation of any vessel at any time it is deemed necessary for the protection of life and property.

(6) The Patrol Commander will terminate enforcement of the special regulations at the conclusion of the marine event if earlier that the announced termination time.

(c) *Effective Dates.* These regulations are effective from 7:30 a.m. to 6 p.m., on October 10, 1992, local time.

Dated: September 25, 1992.
N.T. Saunders,
Rear Admiral (Lower Half), U.S. Coast Guard, Commander, Second Coast Guard District.
[FR Doc. 92-24561 Filed 10-7-92; 8:45 am]
BILLING CODE 4910-14-M

33 CFR Part 100

[CGD1 92-121]

Head of the Connecticut Regatta, Cromwell, Portland and Middleton, CT

AGENCY: Coast Guard, DOT.

ACTION: Implementation notice.

SUMMARY: This notice puts into effect the permanent regulation, 33 CFR 100.105, for the Head of the Connecticut Regatta to be held on Sunday, October 11, 1992, from 9 a.m. to 6 p.m. The regulation is needed to control vessel traffic within the immediate vicinity of the event due to the confined nature of the waterway and anticipated congestion at the time of the event. The purpose of this regulation is to provide for the safety of life and property on navigable waters during the event.

EFFECTIVE DATE: The regulations in 33 CFR 100.105 are effective from 9 a.m. to 6 p.m. on October 11, 1992.

FOR FURTHER INFORMATION CONTACT: Lieutenant (junior grade) Eric G. Westerberg, Chief, Boating Safety Affairs Branch, First Coast Guard District, (617) 223–8311.

DRAFTING INFORMATION: The principal persons involved in drafting this document are LTJG E.G. Westerberg, Project Manager, First Coast Guard District Boating Safety Division, and LCDR J.D. Stieb, Project Attorney, First Coast Guard District Legal Office.

SUPPLEMENTARY INFORMATION: This notice provides the effective period for the permanent regulation governing the 1992 running of the Head of Connecticut Regatta. The Regulated area is closed to all transiting vessel traffic during the effective period of regulation, except for escorted passages as described in the text of the regulation. The regulated area is that section of the Connecticut River between the southern tip of Gildersleeve Island and Light Number 87. Further public notification, including the full text of the regulation will be accomplished through advance notice in the First Coast Guard District Local Notice to Mariners. The full text of this regulation is found in 33 CFR 100.105.

Dated: September 29, 1992.

J.D. Sipes,

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

[FR Doc. 92–24563 Filed 10–7–92; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 117

[CGD13–92–11]

Drawbridge Operation Regulations; Willamette River, OR

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule; correction.

SUMMARY: The temporary final rule to test changes in operation of the upper deck drawspan of the Steel Bridge published August 28, 1992, at 57 FR 39118 requires two corrections. This correction adds the language omitted from the temporary final rule.

EFFECTIVE DATE: October 8, 1992.

FOR FURTHER INFORMATION CONTACT: John E. Mikesell, Chief, Bridge Section, Aids to Navigation and Waterways Management Branch at (206) 553–5864.

Correction

Page 39119, in the third column, in § 117.897, in paragraph (5), line 1, the word "draw" is corrected to read "upper deck drawspan".

Page 39120, in the first column, in § 117.897, in paragraph (5), line 10, the word "Steel" is preceded by the words "upper deck of the".

Dated: October 2, 1992.

John A. Pierson,

Captain, U.S. Coast Guard, Commander, 13th Coast Guard District, Acting.

[FR Doc. 92–24560 Filed 10–7–92; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 117

[CGD8–92–26]

Temporary Drawbridge Operation Regulations; Bayou Dularge, LA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: At the request of the Terrebonne Parish School Board and the Louisiana Department of Transportation and Development (LDOTD), the Coast Guard is implementing temporary regulations for sixty (60) days, from August 31 through October 30, 1992, for the State Route 315 Bayou Dularge drawbridge over the Gulf Intracoastal Waterway, mile 59.9, at Houma, Terrebonne Parish, Louisiana, by extending the 7 a.m. to 8:30 a.m. closure by 15 minutes to 6:45 a.m. to 8:30 a.m. The afternoon closure of 4:30 p.m. to 6 p.m. will remain the same. The temporary change is being made to accommodate school bus traffic due to a new school starting schedule that has been implemented for the current school year. This action will accommodate the needs of school bus traffic and still provide for the reasonable needs of navigation.

EFFECTIVE DATE: This temporary final regulation becomes effective on August 31, 1992 and terminates on October 30, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. John Wachter, Bridge Administration Branch, at the address given above, telephone (504) 589–2965.

SUPPLEMENTARY INFORMATION: This temporary final regulation is published in accordance with 33 CFR 117.43 in order to evaluate the suggested change in the present regulation. In accordance with 5 U.S.C. 533, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing a Notice of Proposed Rulemaking and delaying its effective date would be contrary to the public interest since implementation of this regulation will permit school bus traffic to maintain a schedule that is compatible with the new school starting schedule which began on August 18, 1992.

Interested persons are invited to participate in this rulemaking by submitting written views, comments, data or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

Drafting Information

The drafters of the regulation are Mr. John Wachter, project officer, and LT J.A. Wilson, project attorney.

Economic Assessment and Certification

This temporary regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11304: February 26, 1979).

The economic impact of this temporary final rule is expected to be so minimal that a full regulatory evaluation is unnecessary. The basis for this conclusion is that during the regulated periods there will be very little inconvenience to vessels using the waterway. In addition, mariners requiring the bridge openings are repeat users of the waterway and scheduling their arrivals to avoid the temporary closure period should involve little or no additional expense to them. Since the economic impact of this temporary final regulation is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

Environmental

This temporary final 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 document.

List of Subjects in 33 CFR Part 117

Bridges.

Temporary Regulations

In consideration of the foregoing, the Coast Guard amends 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. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. From August 31, 1992 through October 30, 1992, § 117.451 is amended by revising paragraph (c), by redesignating existing paragraphs (d) and (e) as paragraphs (e) and (f) respectively, and by adding new paragraph (d), as follows:

Note: Because this is a temporary rule, this change will not be codified in the CFR.

§ 117.451 Gulf Intracoastal Waterway.

* * * * *

(c) The draws of the East Main Street Bridge, mile 57.5, and East Park Avenue bridge, mile 57.6, at Houma, shall open on signal; except that, the draws need not be opened for passage of vessels Monday through Friday except holidays from 7 a.m. to 8:30 a.m. and from 4:30 p.m. to 6 p.m.

(d) The draw of the Bayou Dularge bridge, mile 59.9 at Houma, shall open on signal; except that, from August 31, through October 30, 1992, the draw need not be opened for passage of vessels Monday through Friday except holidays from 6:45 a.m. to 8:30 a.m. and from 4:30 p.m. to 6 p.m.

* * * * *

Dated: September 23, 1992.

J.C. Card,

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

[FR Doc. 92–24562 Filed 10–7–92; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 117

[CGD8–92–15]

Drawbridge Operation Regulations; Bayou Des Allemands, Louisiana

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the Louisiana Department of Transportation and Development (LDOTD), the Coast Guard is changing the regulation governing the operation of the swing span bridge on LA 631, across Bayou Des Allemands, mile 13.9, at Des Allemands, in St. Charles Parish, Louisiana, by requiring at least four hours advance notice for an opening of the draw. The present regulation requires that the draw open on signal; except that from 9 p.m. to 5 a.m. the draw opens on signal if at least 12 hours notice is given.

This action will provide relief to the bridge owner and should still provide for the reasonable needs of navigation.

EFFECTIVE DATE: This regulation becomes effective on November 9, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. John Wachter, Bridge Administration Branch, Eighth Coast Guard District, telephone (504) 589–2965.

SUPPLEMENTARY INFORMATION: On June 3, 1992, the Coast Guard published a proposed rule (57 FR 23363) concerning this amendment. The Commander, Eighth Coast Guard District also published the proposal as a Public Notice dated June 26, 1992. Interested parties were given until July 6, 1992 and August 10, 1992, respectively, to submit comments.

Drafting Information

The drafters of this regulation are Mr. John Wachter, project officer, and LT J.A. Wilson, project attorney.

Discussion of Comments

Two letters were received in response to Public Notice No. CGD8–09–92 issued on June 26, 1992. The National Marine Fisheries Service and the U.S. Fish and Wildlife Service offered no objection to the proposed regulation. Since there were no objections to the proposal the Coast Guard is publishing this Final Rule.

Federalism

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

Economic Assessment and Certification

This final regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034: February 26, 1979).

The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. The basis for this conclusion is that mariners requiring the bridge openings are repeat users of the waterway and scheduling their arrival at the bridge at the appointed time during the regulated period will eliminate delays in their passage through the bridge and should involve little or no additional expense to them. Since the economic impact of this regulation is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

Environment

This final 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.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

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

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

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

2. Part 117 is amended by revising Section 117.439 to read as follows:

§ 117.439 Des Allemands Bayou.

The draw of the S631 bridge, mile 13.9 at Des Allemands, shall open on signal if at least four hours notice is given.

Dated: September 25, 1992.

J.C. Card,

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

[FR Doc. 92–24565 Filed 10–7–92; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

33 CFR Part 334

Restricted Areas for Gulf Coast Homeports at Ingleside, TX; Mobile, AL and Pascagoula, MS

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Final rule.

SUMMARY: The Corps of Engineers is establishing naval restricted areas in the waters of the Gulf of Mexico at the Naval Homeports located at Ingleside, Texas; Mobile, Alabama and Pascagoula, Mississippi. The purpose of the restricted areas is to reduce safety hazards and security risks and protect persons and property from the dangers encountered in these areas.

EFFECTIVE DATE: November 9, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph Eppard at (202) 272–1783.

SUPPLEMENTARY INFORMATION: Pursuant to its authorities in Section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and chapter XIX of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3), the Corps of Engineers is hereby establishing restricted areas at each of the Navy Gulf Coast Homeports located at Ingleside, Texas; Mobile, Alabama and Pascagoula, Mississippi. The restricted areas encompass the waters surrounding the Naval Stations and piers where extensive Naval operations take place. The proposed restricted areas are used extensively by U.S. Naval ships and commercial vessels under contract to the Navy, in daily operations around the pier. The piers are used to provide fuel, maintenance and other services for these vessels. The restricted areas are essential to protect persons and property from the dangers associated with these operations and safeguard the area from accidents, sabotage and other subversive acts.

On July 22, 1992, the Corps published the proposed amendments to the naval restricted areas in the Notice of Proposed Rulemaking Section of the **Federal Register** (57 FR 32474–32475), with the comment period expiring on August 21, 1992. We received no comments. However, an omission was made in the proposed Naval Station, Pascagoula regulation in 334.786(b) The regulations. The following prohibition was omitted in the proposed rule "* * * mooring, anchoring, fishing or recreational boating within 500 feet of any quay, pier, wharf, or levee along the Naval Station northern shoreline." The prohibition on entry into the area within 500 feet of Government properties along the Naval Station northern shoreline was widely publicized at the local level by a public notice issued by the Mobile District Engineer on December 12, 1990. Furthermore, the entire restricted area (including the area "within 500 feet of any quay, pier, wharf, or levee along the Naval Station northern shoreline") is subject to closure at any time by the Commanding Officer under these regulations.

Therefore, we have determined that further public comment on this subsection is unnecessary and impracticable and subparagraph (b)(2) is added.

Economic Assessment and Certification

This rule is being issued with respect to a military function of the Department of Defense and the provisions of E.O. 12291 do not apply.

These rules have been reviewed under the Regulatory Flexibility Act (Pub. L. 96–354), which requires preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities i.e., small businesses and small government jurisdictions. It has been determined that these final rules will not have a significant economic impact on a substantial number of small entities and that preparation of a regulatory flexibility analysis is not warranted.

List of Subjects in 33 CFR Part 334

Navigation (water), Transportation, Danger zones.

In consideration of the above, the Corps of Engineers is amending part 334 of title 33 to read as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for part 334 continues to read as follows:

Authority: 40 Stat. 266; (33 U.S.C. 1) and 40 Stat. 892; (33 U.S.C. 3).

2. Part 334 is amended by adding § 334.782, to read as follows:

§ 334.782 Mobile Naval Station, Mobile, Alabama; Naval restricted area.

(a) *The area.* The waters of Mobile Bay beginning at a point at latitude 30°31'25.9" N, longitude 88°05'25.8" W, thence easterly to latitude 30°31'26" N, longitude 88°04'59.2" W, thence northerly to latitude 30° 31'40.5" N, longitude 88°04'59.3" W, thence south-southwesterly along the shoreline to the point of beginning.

(b) *The regulations.* Mooring, anchoring, fishing or recreational boating shall not be allowed within the restricted area. Commercial vessels at anchor will be permitted to swing into the restricted area while at anchor and during tide changes.

(c) *Enforcement.* The regulations in this section shall be enforced by the commanding officer, naval station, Mobile and such agencies as he/she shall designate.

3. Part 334 is amended by adding § 334.786, to read as follows:

§ 334.786 Pascagoula Naval Station, Pascagoula, Mississippi; restricted area.

(a) *The area.* The waters of Pascagoula Harbor beginning at a point at latitude 30°20'18" N, longitude 88°34'50.3" W, thence northerly to latitude 30°20'34.3" N, longitude 88°34'51.8" W, thence easterly to latitude 30°20'34.3" N, longitude 88°34'9.6" W, thence southerly to latitude 30°20'19.5" N, longitude 88°34'9.6" W, thence westerly along the shoreline to the point of beginning.

(b) *The regulations.* (1) Mooring, anchoring, fishing or recreational boating shall not be allowed within the restricted area when required by the Commanding Officer of the Naval Station Pascagoula to safeguard the installation and its personnel and property in times of an imminent security threat; during special operations; during natural disasters; or as directed by higher authority.

(2) Mooring, anchoring, fishing, or recreational boating shall not be allowed at any time within 500 feet of any quay, pier, wharf, or levee along the Naval Station northern shoreline.

(3) Commercial vessels at anchor will be permitted to swing into the restricted area while at anchor and during tide changes.

(c) *Enforcement.* The regulations in this section shall be enforced by the Commanding Officer, naval station, Pascagoula and such agencies as he/she shall designate.

4. Part 334 is amended by adding § 334.802, to read as follows:

§ 334.802 Ingleside Naval Station, Ingleside, Texas; restricted area.

(a) *The area.* The waters of Corpus Christi Bay beginning at a point at latitude 27°49'13.6" N, longitude 97°12'5.7" W, thence southerly to latitude 27°49'7.3" N, longitude 97°12'5.4" W, thence south-southwesterly to latitude 27°49'01" N, longitude 97°12'39.4" W, thence north-northeasterly to latitude 27°49'02.4" N, longitude 97°12'48.3" W, thence north-

northeasterly to latitude 27°49'14.9" N, longitude 97°12'42.7" W, thence easterly along the shoreline to the point of beginning.

(b) *The regulations.* Mooring, anchoring, fishing or recreational boating shall not be allowed within the restricted area. Commercial vessels at anchor will be permitted to swing into the restricted area while at anchor and during tide changes.

(c) *Enforcement.* The regulations in this section shall be enforced by the Commanding Officer, Naval Station, Ingleside and such agencies as he/she shall designate.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 92-24379 Filed 10-7-92; 8:45 am]

BILLING CODE 3710-92-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Parts 1254 and 1258

RIN 3095-AA19

Use of Motion Picture Research Room; Self-Service Copying

AGENCY: National Archives and Records Administration.

ACTION: Final rule and interim final rule.

SUMMARY: The National Archives and Records Administration (NARA) is revising its regulations in 36 CFR part 1254 on use of the Motion Picture, Sound and Video Research Room to allow self-service copying of unrestricted motion picture, video, and audio holdings under controlled conditions. This rule modifies the ban on self-service copying imposed by the NARA final rule published on November 19, 1991, at 56 FR 58311. NARA is also promulgating an interim rule setting fees in 36 CFR part 1258 for self-service copying on NARA-provided equipment. This rule will affect researchers who use motion picture, video, and audio holdings in the National Archives.

DATES: The effective date for this final rule and interim rule is October 8, 1992.

Comments on the changes to part 1258 must be received by NARA by November 9, 1992.

ADDRESSES: Submit comments on the amendments to part 1258 to Director, Program Planning and Congressional Liaison Division (NAA), Washington, DC 20408.

FOR FURTHER INFORMATION CONTACT: Mary Ann Palmos or Nancy Allard at 202-501-5110.

SUPPLEMENTARY INFORMATION: On May 28, 1992, NARA published a notice of proposed rulemaking (57 FR 22447) to amend the "clean research room" policy in effect in the Motion Picture, Sound, and Video Research Room in the National Archives Building. A public meeting was held on June 19, 1992, at the National Archives Building to answer questions about the proposed rule. Approximately 20 individuals attended the public meeting. Seventeen written comments were received. All comments received careful consideration in the development of this final rule. Following is a discussion of the major issues raised in the public meeting and written comments:

Appointments

The proposed rule stated that viewing stations would be available on a first-come, first-served, basis. When other researchers were waiting to use a station, a 4-hour limit would be imposed on use of the stations. Eight comments addressed the need for appointments, particularly for researchers coming from outside the Washington, DC, area. Several commenters suggested that half-day appointments be permitted. One commenter recommended full-day appointments. Another commenter suggested a mix of reserved and walk-in stations.

NARA proposed the first-come, first-served system as a fair means of providing access to the limited number of viewing stations in the research room. We recognize, however, that guaranteed access on specific dates is important to a number of researchers. We have decided, therefore, to make the following modifications in this final rule.

Viewing stations in both the unrestricted area and the restricted area of the Motion Picture, Sound, and Video Research Room will be made available on a first-come, first-served basis from 8:45 am to 1:45 pm., Monday through Friday. The restricted area stations and unrestricted area film stations may be reserved by advance appointment for use from 2 pm to 5 pm., Mondays through Fridays. Audio and video stations in both the restricted area and the unrestricted area may be reserved by advance appointment for use from 2 pm to 10 pm., Mondays through Fridays, and from 8:45 am to 5 pm., on Saturdays. Stations in both areas of the research room that have not been reserved will be made available on a first-come, first-served basis until 5 pm. Film viewing stations will not be available during the extended evening and Saturday hours because use of the equipment must be monitored by Motion Picture, Sound, and Video Recording Branch staff; these staff members are not available during the extended hours. The research room will be open during the extended evening and Saturday hours for reserved use of the audio and video viewing stations. Audio titles and restricted video titles must be requested and pulled in advance of the extended hours. No consultations will be available. The research room will be closed if there are no confirmed scheduled reservations.

The system for making appointments will be similar to the system now in effect. On the first working day of the month, NARA will begin accepting appointments for the following month and will continue to accept appointments for that month until all appointments are taken. For example, on October 1, 1992, NARA will begin accepting appointments for the entire month of November 1992. Because NARA must schedule staff from other research rooms to work the extended hours, reservations for evening and Saturday appointments on audio and video stations must be made at least two days before the date of use. NARA will accept later reservations only if at least one confirmed reservation has been made and staff already has been scheduled to work the extended hours.

Researchers may make up to six appointments each month. Appointments must be confirmed two days in advance and unconfirmed appointments will be canceled. Appointments will be held for 15 minutes; after that time on weekdays, the station will revert to first-come, first-served status. First-time researchers who must obtain a researcher identification card are encouraged to do so at least 15 minutes before the appointment or to check in with the research room attendant before going to the second floor to obtain the researcher identification card.

We believe that the system outlined here addresses the concerns expressed in the comments. Researchers will be able to reserve use of a station for at least 3 hours each day (8 hours for audio and video stations). Film stations are not as heavily used as the video stations; we anticipate that researchers with reservations for a film station often will be able to extend their period of use by arriving at the research room before the reserved time. With the addition of Saturday reservations, the number of potential reservations for the more heavily used video stations will increase over the present availability.

Copying Equipment Provisions.

The proposed rule specified that one piece of copying equipment would be allowed into the unrestricted area of the research room and defined that piece as

one recording device (videocassette recorder, audio recorder, or video camera) and the video and audio cables to connect the personal device to NARA-provided viewing equipment. Six individuals objected to this provision, suggesting that other accessory devices were necessary to make the most useful copy for the researcher's purpose. The purpose of the proposed provision was to allow effective supervision of the small and congested unrestricted areas of the research room. Based on the comments, we believe that our purpose will be accomplished and user needs will be better accommodated without a specific limit on the type and number of pieces of equipment that can be used in the research room. We have modified § 1254.26(h)(2) to require that all equipment, including cabling and accessory devices, brought into the unrestricted area of the research room must be placed on the small cart or table adjacent to each station. The cart or table is approximately 18 inches by 24 inches. At film viewing stations, a tripod holding a video recording camera may be placed on the floor in front of the flatbed; other equipment must be placed on the small table. Equipment (except tripods used at film stations) may not be placed on the floor, on top of NARA equipment, on another unoccupied station, or on a cart used for transporting the equipment. Because of the congestion in the research room, carts must be removed to the lockers or locker area outside the research room after equipment is unloaded on the small table at a station. The crowded conditions in the Motion Picture, Sound, and Video Research Room will be improved at the future Archives facility at College Park, MD (Archives II) where specially designed viewing stations will be used and equipment carts provided.

In response to two comments, we have clarified the restriction on leaving the research room in the proposed § 1254.26(h)(2) [now § 1254.26(h)(2)(ii)] to allow researchers to consult finding aids in the unrestricted research area while their audio or video equipment is operating at an audio or video viewing station. Researchers must remain in the research room while the equipment is operating in case the NARA or personal equipment malfunctions or the NARA reference tape breaks or jams. The film viewing stations still must be attended at all times.

In response to one comment, we have also removed the limit on the number of video and/or audio cassettes that may be brought into the unrestricted research area. All researcher copying media will be marked "NARA-approved personal property" and will be inspected upon departure as described in the proposed rule.

One commenter suggested that we allow researchers to hook up their own equipment to the NARA-provided self-service copying station when the station was not in use. We have not adopted that comment. This station is a viewing/copying station for researchers who do not bring their own equipment. As the proposed rule noted, hook-up of personal equipment to the NARA equipment in this station is prohibited to protect the NARA equipment from possible undue wear or damage.

Use of Restricted Materials

Three comments addressed the proposed segregation of restricted materials. One individual suggested that the restricted and "mixed" titles be maintained in the restricted viewing area on open shelves so that researchers could verify the copyright status of titles without having to consult the staff. Another individual suggested that NARA use a sign-out sheet for restricted titles instead of individual reference service slips. We did not adopt either of these suggestions because they would not provide the level of control necessary to protect the materials. Recopying of "mixed" reference tapes to separate unrestricted titles is scheduled for completion by late September; when this project is finished, there will be no "mixed" reference tapes.

A third commenter objected to NARA's decision not to permit copyrighted materials to be reproduced on personal copying equipment on the grounds that NARA should not act as "copyright police for a privileged group of copyright holders." The commenter suggested that NARA mark each frame of its reference copies with a small logo to allow "fair use" personal copying to take place. This suggestion is not practical. Segregation of copyrighted and other restricted materials in a viewing-only area remains the most feasible way for NARA to prevent unauthorized copying of these materials while allowing personal copying of unrestricted materials.

Other Comments

Several comments addressed issues outside the subject of this rulemaking, such as the handling of film requests and preventive maintenance on equipment. These issues are not appropriate for addressing in NARA regulations.

Fees

NARA is establishing in 36 CFR part 1258, as an interim rule, fees for use of the self-service copying station and separate purchase of blank videocassettes from NARA. NARA has agreed that a 120-minute length cassette should be provided instead of the 90-minute length cassette described in the proposed rule because the longer cassette is more commonly available.

These fees are established as an interim rule and NARA invites comments on the amendments to part 1258. NARA will address any comments received in a final rule to be published after the comment closing date. NARA fees are required by 44 U.S.C. 2116(c) to be set to recover, to the extent possible, the actual costs for making reproductions of records and other materials transferred to the custody of the Archivist of the United States.

Effective Date

Immediate implementation of this final rule will benefit users of the Motion Picture, Sound, and Video Research Room by restoring their personal copying privileges. Therefore, in accordance with 5 U.S.C. 553(d)(3), NARA finds good cause to make this rule effective upon publication in the **Federal Register**.

The NARA-provided self-service video copying equipment described in § 1254.26(h)(4) has been ordered but may not be available on the effective date of this regulation.

This rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981. As required by the Regulatory Flexibility Act, it is hereby certified that this rule will not have a significant impact on small business entities.

List of Subjects

36 CFR Part 1254

Archives and records; Confidential business information; Freedom of information; Micrographics.

36 CFR Part 1258

Archives and records.

For the reasons set forth in the preamble, chapter XII of title 36 of the Code of Federal Regulations is amended as follows:

PART 1254—AVAILABILITY OF RECORDS AND DONATED HISTORICAL MATERIALS

1. The authority citation for part 1254 continues to read as follows:

Authority: 44 U.S.C. 2101–2118; 5 U.S.C. 552; and E.O. 12600, 52 FR 23781, 3 CFR, 1987 Comp. p. 235.

2. Section 1254.26 is amended by removing the words "and audio and video reproduction devices" from the introductory text of paragraph (e) and adding a new paragraph (h) to read as follows:

§ 1254.26 Additional rules for use of certain research rooms in the National Archives and the Washington National Records Center buildings.

* * * * *

(h) In addition to the procedures in paragraphs (c) through (g) of this section, the following procedures apply to the Motion Picture, Sound, and Video Research Room (hereinafter, "the research room") in the National Archives Building:

(1) The following procedures govern the use of NARA viewing equipment in the research room:

(i) Use of the viewing equipment in the research room is provided on a first-come, first-served basis, from 8:45 a.m. to 1:45 p.m., Monday through Friday, excluding holidays.

(ii) Reservations for use of film viewing equipment from 2 p.m. to 5 p.m., Monday through Friday, excluding holidays, may be made in accordance with the procedures in paragraph (h)(1)(iv) of this section. If viewing equipment is not occupied by a holder of a reservation, it will be made available on a first-come, first-served basis.

(iii) Reservations for use of the audio and video equipment from 2 p.m. to 10 p.m., Monday through Friday, excluding holidays, and 8:45 a.m. to 5 p.m. on Saturday, may be made in accordance with the procedures in paragraph (h)(1)(iv) of this section. If audio or video equipment is not occupied by a holder of a reservation, it will be made available on a first-come, first-served basis until 5 p.m., Monday through Friday. Audio and video equipment may be used after 5 p.m. on weekdays and on Saturdays only with a reservation. Audio and restricted video stations may be used after 5 p.m. on weekdays and on Saturdays only for previously furnished titles; no additional titles will be furnished during those time periods.

(iv) Reservations for viewing equipment will be accepted beginning on the first working day of the month preceding the date to be reserved. For example, a reservation for any date in November may be made on the first working day of October. Reservations for audio and video stations will not be accepted less than two working days (excluding Saturdays) before the date to be reserved, unless other confirmed reservations have been made for that date. A researcher may make up to six reservations each month. Reservations must be confirmed two days in advance of the date reserved. Reservations will be held for 15 minutes on the reservation date.

(2) The following procedures shall be followed when personal recording equipment and accessories are brought into the unrestricted viewing and copying area in the research room:

(i) Personal recording equipment brought into the unrestricted viewing and copying area in the research room must be inspected and tagged by the research room attendant prior to admittance. All equipment and accessory devices must be placed on the table adjacent to the viewing station, except that a tripod holding a video camera may be placed on the floor in front of a film viewing station.

(ii) Researchers shall remain in the research room while their personal equipment is in use at an audio or video viewing station. The film viewing stations must be attended at all times while in use. Researchers shall remove their personal equipment from the research room when they leave the room for the day or for extended breaks.

(iii) NARA will not be responsible for assisting with "hook-up" to NARA viewing equipment; for providing compatibility between the personal recording equipment and NARA viewing equipment; or for the quality of the copies made by researchers. NARA will provide the researcher information on the types of NARA equipment being used in the research room and on the cables necessary for hook up to the NARA viewing equipment.

(3) When a researcher brings audio or video recording tapes or cassettes into the unrestricted area of the research room, the research room attendant will mark the recording media "NARA-approved personal property" for identification purposes. Such media shall be inspected upon exit from the research room, as well as upon exit from the National Archives Building.

(4) A NARA-furnished video copying station and 120-minute blank video cassette may be reserved, for a fee, on a first-come, first-served basis for a 90-minute period of time. If no other individual is waiting to use the station, an additional time period may be reserved at the end of the current period. Personal recording devices may not be connected to NARA equipment at the video copying station. Only NARA-provided tapes may be used at the video copying station. Fees for use of the station and blank cassette are specified in § 1258.12 of this chapter.

(5) The NARA or personal recording device and media may be used to make a personal-use copy of unrestricted archival materials in the research room.

(6) Each researcher will be provided a copy of the Motion Picture, Sound, and Video Research Room rules and a warning notice on potential copyright claims in unrestricted titles. The researcher must sign a statement acknowledging receipt of the rules and notice. The individual making and/or using the copy is responsible for obtaining any needed permission or release from a copyright owner for other use of the copy.

(7) No personal recording device or media is permitted in the restricted viewing area in the research room.

PART 1258—FEES

3. The authority citation for part 1258 continues to read as follows:

Authority: 44 U.S.C. 2116(c).

4. Section 1258.12 is amended by redesignating paragraphs (g) and (h) as paragraphs (h) and (i), respectively, and adding a new paragraph (g) to read as follows:

§ 1258.12 Fee schedule.

* * * * *

(g) *Self-service video copying in the Motion Picture, Sound and Video Research Room:*

(1) Initial 90-minute use of video copying station with 120-minute videocassette: $15.25.

(2) Additional 90-minute use of video copying station with no videocassette: $8.75.

(3) Blank 120-minute videocassette: $6.75.

* * * * *

Dated: September 29, 1992.

Don W. Wilson,

Archivist of the United States.

[FR Doc. 92-24520 Filed 10-7-92; 8:45 am]

BILLING CODE 7515-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MN4-1-5178; FRL-4509-5]

Approval and Promulgation of Implementation Plans; Minnesota

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Final rulemaking.

SUMMARY: On May 6, 1982, USEPA conditionally approved Minnesota's Part D State Implementation Plan (SIP) for particulate matter (47 FR 19520), conditioned on the State providing

emissions limits for grain loading operations that satisfied the requirements of Part D of the Clean Air Act. Minnesota submitted a SIP revision request on July 9, 1986, to address this condition. USEPA proposed to approve this request on June 24, 1987 (52 FR 23692). On February 24, 1992, Minnesota withdrew a portion of this request. The USEPA is approving the remaining request for revision to the SIP, and removing the condition on the approval of the State's Part D SIP for particulate matter.

EFFECTIVE DATE: This final rulemaking becomes effective on November 9, 1992.

ADDRESSES: Copies of the SIP revision and the October 17, 1991, technical support document are available at the following addresses for review: (It is recommended that you telephone John Summerhays at (312) 886–6067, before visiting the Region V office.)

U.S. Environmental Protection Agency (AE–17J), Region V, Air Enforcement Branch, 77 West Jackson Blvd., Chicago, Illinois 6064–3590.

A copy of today's revision to the Minnesota SIP is available for inspection at:

U.S. Environmental Protection Agency, Public Information Reference Unit, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: John Summerhays, Air Enforcement Branch (AE–17J), United States Environmental Protection Agency, Region V, Chicago, Illinois 60604–3590, (312) 886–6067.

SUPPLEMENTARY INFORMATION:

History

Pursuant to section 107 of the Clean Air Act, the USEPA designated certain areas of the country as not attaining the National Ambient Air Quality Standard (NAAQS) for total suspended particulates (TSP). In Minnesota, the Twin Cities and the City of Duluth were designated as nonattainment for TSP (see 43 FR 8962 (March 3, 1978) and 43 FR 45993 (October 5, 1978)). for these areas, Part D of the Act required the State to revise its SIP to provide for the attainment of the NAAQS.

On August 4, 1980, and October 17, 1980, Minnesota submitted its Part D TSP SIP. This submittal generally required all industrial sources to control their TSP emissions to levels obtainable by applying reasonably available control technology (RACT) and to make a commitment to study nontraditional fugitive emissions such as reentrained road dust.

The USEPA conditionally approved the submittal on May 6, 1982 (47 FR 19520), conditioned upon Minnesota submitting RACT level opacity limits for grain handling facilities. On July 9, 1986, Minnesota submitted a request for a SIP revision in response to the condition. The revision request included revised regulations, a statement by the State of Minnesota interpreting certain requirements applicable to barge loading, and operating permits for three grain handling facilities in Duluth.

On June 24, 1987, the USEPA published a notice in the **Federal Register** proposing to approve the revisions requested by the State of Minnesota. The basis for the proposed action was a judgement that the revised limitations would require RACT at grain handling facilities. USEPA simultaneously proposed to remove the condition on the approval of the Minnesota's TSP SIP. No comments were submitted on this proposed rulemaking.

On July 1, 1987, USEPA promulgated a revision of the National Ambient Air Quality Standard (NAAQS) for particulate matter. This action replaced the standard based upon total suspended particulates with a new standard based upon smaller particulates nominally measuring 10 microns or less, a pollutant identified as PM_{10}. In conjunction with this revision, USEPA published its interpretation of the applicable SIP requirements for the new standard. Among the findings in this notice was a conclusion that particulate matter SIPs would no longer be required to meet the requirements of Part D of the Act, which included the requirement for the application of RACT. This notice also concluded that the revision will not interfere with attainment or maintenance of the new NAAQS.

The Clean Air Act Amendments of 1990, enacted on November 15, 1990, reinstate a requirement for RACT for particulate matter in some areas. Specifically, these amendments provide for attainment/nonattainment designations for PM_{10} and require that new SIP revisions including provision for RACT be submitted by November 1991 for statutorily designated PM_{10} nonattainment areas. In Minnesota, portions of the St. Paul and Rochester areas were designated nonattainment for PM_{10} and were required to submit PM_{10} SIP's by November 15, 1991.

On November 26, 1991, Minnesota submitted PM_{10} SIP revisions intended to meet the amended Clean Air Act requirements for the Saint Paul and Rochester areas. This submittal is being reviewed separately from the grain loading regulations being addressed here.

On November 1, 1991, William MacDowell of USEPA Region V transmitted a letter to Lisa Thorvig of the Minnesota Pollution Control Agency (MPCA) recommending withdrawal of a portion of the State's submittal. On February 24, 1992, Charles Williams, Commissioner of the MPCA, officially withdrew a portion of the submittal, as described below.

Reassessment of Submittal

Minnesota's July 9, 1986, submittal includes four regulations, a statement interpreting these rules with respect to barge loading, and a set of permits providing additional limitations. Rule 7005.2520 provides definitions of several terms. Rule 7005.2521 imposes many significant limitations, most notably including quantitative limits on opacity and emissions for applicable facilities. Rule 7005.2522 prohibits grain handling facilities from causing a public nuisance. Rule 7005.2523 sets criteria for identifying which facilities are subject to various limits in Rule 7005.2521. Minnesota's interpretative statement that was included in the SIP submittal concluded that barge loading in Minnesota uses normal loading even during topping off (and that trimming is not performed with barges), which signifies that the 20 percent opacity limit in Rule 7005.2521 applies throughout the barge loading process. Although the July 9, 1986 submittal included permits imposing additional opacity restrictions for three facilities in Duluth, these permits were withdrawn from USEPA consideration on February 24, 1992.

The requirements of particulate matter have changed substantially since USEPA proposed approval of Minnesota's grain handling regulations. Therefore, USEPA has reconsidered the criteria by which Minnesota's SIP submittal is evaluated. As a result of changes in applicable requirements, these Statewide regulations need no longer be evaluated according to whether they require the application of RACT. Instead, the submittal was reevaluated as to whether the submittal provides more or less stringent limitations than the existing SIP. Evaluation of whether the full set of requirements have been met for the Saint Paul and Rochester nonattainment areas will be conducted separately based in large part upon Minnesota's November 26, 1991, submittal.

The regulations submitted by Minnesota on July 9, 1986, include Rules 7005.2520 through 7005.2523. The existing SIP is based on an older regulation codified as APC–29. The new Rules 7005.2520 through 7005.2523 are

more stringent than the SIP rule APC–29 in several significant respects. Most notably, rules 7005.2520 through 7005.2523 provide opacity limits representing relatively stringent, quantitative requirements on the capture of emissions. In contrast, APC–29 only requires use of induced draft, which arguably need not be designed to capture emissions effectively. Second, Rule 705.2523 requires that emissions from emission control equipment meet both the grains per standard cubic foot limit of a rule codified in the SIP as APC–5 and a limitation of 10 percent opacity. In contrast, APC–29 allows noncompliance with the APC–5 limit if a control efficiency limit is met, and does not impose the opacity limit. The two sets of regulations appear to have comparable stringency with respect to the criteria for determining the applicability of the limitations. A more detailed comparison of the revised regulations to the existing SIP regulation is provided in the technical support document.

The technical support document also discusses concerns which arose after publication of the notice of proposed rulemaking relating to potential expiration of enforceability of approved but expiring permits. Since the State has withdrawn the permits submitted in 1986, this issue is now moot.

Based on this review, and considering Minnesota's interpretative statement pertaining to barge loading, USEPA has concluded that the revised regulations are more stringent than the existing SIP regulation. With respect to the Saint Paul and Rochester PM_{10} nonattainment areas, the submittal of July 9, 1986, may be considered an interim submittal for enhancing the control of particulate matter. With respect to the remainder of the State, no further submittal is required, and the submittal may be considered to provide better assurance that the PM_{10} NAAQS will be maintained. Consequently, USEPA has concluded that these revised regulations may be approved on a Statewide basis.

Conclusion

USEPA is by today's action approving Minnesota's revision to its State implementation plan for particulate matter. The revision pertains to Minnesota's plan for the reduction of particular emissions during grain loading operations. The revised grain handling regulations include Rule 7005.2520, Definitions; Rule 7005.2521, Standards of performance for dry bulk agricultural commodity facilities; Rule 7005.2522, Nuisance; and Rule 7005.2523, control requirements schedule. USEPA interprets these regulations in accordance with the interpretative statement included by Minnesota in its 1986 submittal. These regulations replace the rule previously identified as APC–29. USEPA is today also removing the condition on the approval of Minnesota's Part D SIP for particulate matter contained in 40 CFR 52.1230.

USEPA has reviewed the State's SIP revision request for conformance with the provisions of the Clean Air Act Amendments of 1990. These amendments require further submittals from the State for selected areas (which were in fact submitted November 26, 1991), but these requirements for further submittals do not change the criteria for judging this submittal. The Agency has determined that this action conforms with requirements under the amended Clean Air Act irrespective of the fact that the submittal preceded the date of enactment of the amendments.

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

This action has been classified as a Table Two action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Tables Two and Three SIP revisions (54 FR 222) from the requirements of section 3 of Executive Order 12291 for a period of 2 years. USEPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on USEPA's request.

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 December 7, 1992. 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, Environmental protection, Incorporation by reference, Intergovernmental relations, Particulate matter.

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

Dated: June 25, 1992.

Valdas V. Adamkus,

Regional Administrator.

Title 40 of the Code of Federal Regulations, chapter I, part 52, is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

Authority: 42 U.S.C. 7401–7671q.

2. Section 52.1220 is amended by adding paragraph (c)(25) to read as follows:

§ 52.1220 Identification of plan.

* * * * *

(c) * * *

(25) On July 9, 1986, the State of Minnesota submitted Rules 7005.2520 through 7005.2523, submitted to replace the rule APC–29 in the existing SIP (see paragraph (20)). This submittal also included State permits for three sources, but these permits were withdrawn from USEPA consideration on February 24, 1992. This submittal provides for regulation of particulate matter from grain handling facilities, and was submitted to satisfy a condition on the approval of Minnesota's Part D plan for particulate matter.

(i) Incorporation by reference.

(A) Minnesota Rule 7005.2520, Definitions; Rule 7005.2521, Standards of Performance for Dry Bulk Agricultural Commodity Facilities; Rule 7005.2522, Nuisance; and Rule 7005.2523, Control Requirements Schedule, promulgated by Minnesota on January 16, 1984, and effective at the State level on January 23, 1984.

(ii) Additional Material.

(A) Appendix E to Minnesota's July 9, 1986, submittal, which is a statement signed on April 18, 1986, by Thomas J. Kalitowski, Executive Director, Minnesota Pollution Control Agency, interpreting Rules 7005.2520 through 7005.2523 in the context of actual barge loading practices in Minnesota.

* * * * *

§ 52.1230 [Amended]

3. Section 52.1230 is amended by removing paragraph (a) and by

redesignating paragraphs (b) and (c) as (a) and (b), respectively.

[FR Doc. 92-24383 Filed 10-7-92; 8:45 am]
BILLING CODE 6560-50-M

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40 CFR Part 52

[WI23-1-5405; FRL-4514-5]

Approval and Promulgation of Implementation Plans; Wisconsin

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Final rule.

SUMMARY: USEPA is approving the Oshkosh Carbon Monoxide State Implementation Plan (SIP) as a revision to the Wisconsin SIP for Carbon Monoxide (CO).

USEPA's action is based upon a revision request which was submitted by the State to satisfy the requirements of the Clean Air Act

DATES: This action will be effective December 7, 1992 unless notice is received within 30 days that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register.**

ADDRESSES: Copies of the SIP revision request and USEPA's analysis are available for inspection at the following address: (It is recommended that you telephone Camille Szematowicz at (312) 886-6081, before visiting the Region 5 Office). U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Written comments should be sent to: Carlton Nash, Chief, Regulation Development Section, Air Toxics and Radiation Branch (AT-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

A copy of today's revision to the Wisconsin SIP is available for inspection at: U.S. Environmental Protection Agency, Public Information Reference Unit, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Camille Szematowicz, Air Toxics and Radiation Branch, Regulation Development Section (AT-18J), U.S. Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 886-6081.

SUPPLEMENTARY INFORMATION:

I. Summary of State Submittal

On November 22, 1991, the Wisconsin Department of Natural Resources (WDNR) submitted a revision to Wisconsin's SIP for CO. The submittal consists of a single source SIP revision pertaining to the Mercury Marine Engine Testing Facility located in Oshkosh, Wisconsin. The WDNR submitted the SIP revision to address violations of the National Ambient Air Quality Standards (NAAQS) that were recorded in 1988 and 1989. This SIP submittal is being presented for Direct Final rulemaking in today's **Federal Register.**

II. USEPA's Analysis of State Submittal

USEPA has reviewed the Wisconsin plan for conformance with the provisions of the Clean Air Act as amended on November 15, 1990, and has determined that the submitted plan conforms with the Clean Air Act requirements. That is, the plan: Contains enforceable emission limitations with a schedule for compliance; includes a program to provide for the enforcement of the emission limits; and provides modeling for the purpose of demonstrating that the SIP's control measures will provide for attainment and maintenance of the CO NAAQS in Oshkosh. In addition, the SIP includes provisions for the operation of air quality monitors in the Oshkosh area. More detail is provided in the following subsections as to how the Oshkosh SIP satisfies the appropriate Clean Air Act requirements.

(1) Enforceable Emission Limitations

The SIP revision consists of an Administrative Order signed by Donald R. Thieler, Director, Bureau of Air Management, WDNR, on November 22, 1991. The Administrative Order contains the following provisions which specify enforceable emission limitations with which Mercury Marine Engine Testing Facility must comply.

(a) Mercury Marine must operate its engine testing facility such that each engine tested at the Endurance Dock has its emissions vented through the exhaust collection system.

(b) The aggregate rated horsepower of engines being tested at any given time may not exceed:

(i) 4,000 horsepower for all engines at the Endurance Dock, of which not more than 2,000 horsepower may be attributable to inboard/outboard engines, and not more than 2,000 horsepower may be attributable to outboard engines;

(ii) 200 horsepower for all engines (outboard) at the wet cell tests; and

(iii) 1,500 horsepower for all engines at the shaker tests and the dynamometer cell tests.

(c) Mercury Marine must maintain operation records to demonstrate its compliance with the aggregate horsepower limitations. These records must be maintained for 3 years and be available to WDNR and USEPA upon request. The records shall include at a minimum: hourly data regarding the total rated horsepower of all engines being tested at the Endurance Dock, wet cells, shaker tests, and dynamometer cells of the facility; the fuel consumption rate; and the percentage of total horsepower attributable to outboard and inboard/outboard engines at each site. These records must be submitted quarterly along with any exceedance information.

(d) Mercury Marine shall conduct an inspection for leaks of the exhaust capture system each time an engine is connected to the exhaust system.

(e) Mercury Marine shall conduct biennial stack tests of the engine testing facility's exhaust capture system. These tests must be performed according to Method 10 in 40 CFR part 60.

USEPA has reviewed these provisions and has concluded that they are Federally enforceable. The Mercury Marine facility is already in compliance with the Administrative Order so that a timetable for compliance is no longer relevant. Mercury Marine must be in compliance upon the effective date of federal approval.

(2) Modeling Analysis/Attainment Demonstration

WDNR also submitted a modeling analysis of Oshkosh's air quality at the new emission limits and operating scenarios as part of the SIP revision. The modeling followed USEPA modeling guidelines. The USEPA Industrial source Complex Short Term (ISCST) model was used, with five years of meteorological data from Green Bay, WI. USEPA has concluded that the modeling analysis fully demonstrates attainment of the NAAQS with the limits and operating restrictions contained in the SIP revision.

(3) Ambient Air Monitoring

The Administrative Order mandates that Mercury Marine be responsible for the installation and operation of an ambient air quality monitor for CO as well as a meteorological station in the vicinity of the engine testing facility at a site approved by WDNR. This monitor must remain in operation for a period of at least 2 years. The monitor and meteorological system will be operated in accordance with USEPA monitoring requirements in 40 CFR part 58. USEPA believes the operation of these monitors will be useful in confirming the continued maintenance of the CO NAAQS in the Oshkosh area.

III. USEPA's Rulemaking Action

The SIP revision submitted by the WDNR to resolve the CO ambient air violations of 1988 and 1989 in Oshkosh satisfies the Clean Air Act requirements for such plan revisions. Therefore, USEPA is approving the Oshkosh Carbon Monoxide State Implementation Plan as a revision to the Wisconsin SIP for CO.

Because USEPA considers today's action noncontroversial and routine, we are approving it today without prior proposal. The action will become effective on December 7, 1992. However, if we receive notice by November 9, 1992 that someone wishes to submit critical comments, then USEPA will publish: (1) A notice that withdraws the action, and (2) a notice that begins a new rulemaking by proposing the action and establishing a comment period.

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

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). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of 2 years. USEPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the temporary waiver until such time as it rules on USEPA's request.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et. seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small b ısinesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S.E.P.A.*, 427 U.S. 246, 256–66 (S. Ct 1976); 42 U.S.C. § 7410(a)(2).

The Agency has reviewed this request for revision of the federally approved State Implementation Plan for conformance with the provisions of the 1990 Amendments enacted on November 15, 1990. The Agency has determined that this action conforms with those 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 December 7, 1992. 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, Carbon monoxide, Incorporation by Reference, Intergovernmental relations, Reporting and record keeping requirements.

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

Dated: August 26, 1992.

Valdas V. Adamkus,

Regional Administrator.

40 CFR part 52, subpart YY, is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671(q).

Subpart YY—Wisconsin

2. Section 52.2570 is amended by adding paragraph (c)(62) to read as follows:

§ 52.2570 Identification of plan.

* * * * *

(c) * * *

(62) On December 11, 1991, the United States Environmental Protection Agency received a revision to Wisconsin's State Implementation Plan for Carbon Monoxide. This revision took the form of Administrative Order AM–91–71, dated November 22, 1991, which incorporates a stipulation between the Wisconsin Department of Natural Resources and the Brunswick Corporation d.b.a. Mercury Marine. The Administrative Order addresses the emissions of carbon monoxide into the ambient air from Mercury Marine Engine Testing Facility in Oshkosh, Wisconsin.

(i) Incorporation by reference.

Administrative Order AM–91–71, dated November 22, 1991, which incorporates a stipulation between the Wisconsin Department of Natural Resources and the Brunswick Corporation d.b.a. Mercury Marine.

(ii) Additional materials.

Attainment modeling demonstration of control strategy to limit carbon monoxide emissions from Mercury Marine Engine Testing Facility, dated December 20, 1989.

[FR Doc. 92–24384 Filed 10–7–92; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[MA–14–2–5588; A–1–FRL–4507–4]

Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; (Amendment to Massachusetts' SIP, for Ozone and for Carbon Monoxide, for the Control of Air Pollution by Certifying Roadway Tunnel Ventilation Systems in the Metropolitan Boston Air Pollution Control District)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Massachusetts. This revision requires the pre-construction and operating certification of roadway tunnel ventilation systems in the Metropolitan Boston Air Pollution Control District. The intended effect of this action is to control vehicular emissions of carbon monoxide (CO), hydrocarbons (HC) and nitrogen oxides (NO_x). These pollutants contribute to the carbon monoxide and ozone air pollution problems in the Boston urbanized area. This action is being taken under section 110 and Part D of the Clean Air Act.

EFFECTIVE DATE: This rule will become effect on November 9, 1992.

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 Division of Air Quality Control, Department of Environmental Protection, One Winter Street, 7th Floor, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Donald O. Cooke, (617) 565-3227.

SUPPLEMENTARY INFORMATION: On December 30, 1991, (56 FR 67266–67268), EPA published a Notice of Proposed Rulemaking (NPR) for the Commonwealth of Massachusetts. The NPR proposed approval of a revision to Massachusetts' State Implementation Plan (SIP) for Ozone and for Carbon Monoxide, for the control of air pollution by certifying roadway tunnel ventilation systems in the Metropolitan Boston Air Pollution Control District. The revision contains definitions for four new terms added to 310 C.M.R. 7.00 (no-build alternative, project area, project roadway, and tunnel ventilation system) and adds a new section, 310 C.M.R. 7.38, to establish the roadway tunnel ventilation systems certification program. The formal SIP revision was submitted by Massachusetts on January 30, 1991.

Other specific requirements of the Commonwealth's State Implementation Plan (SIP) Revision for Ozone and for Carbon Monoxide, for the control of air pollution by certifying roadway tunnel ventilation systems in the Metropolitan Boston Air Pollution Control District, and the rationale for EPA's proposed action are explained in the NPR and will not be restated here.

EPA received comments on the NPR from two organizations. On January 28, 1992, the Sierra Club submitted comments opposing approval of the SIP revision. It supplemented these comments on February 12, 1992.[1] In addition, the Conservation Law Foundation submitted comments on January 29, 1992 which were supportive of EPA's approval of the proposed revision. The region has responded fully to these comments in a response memorandum attached to the Technical Support Document. A brief summary of these comments and EPA's responses appear below.

In its comments, the Sierra Club argues that the revision of the SIP to include the tunnel roadway ventilation system regulation would weaken the Massachusetts SIP in violation of Section 193 of the Clean Air Act. The tunnel ventilation system regulation states that tunnel ventilation systems are not subject to the plan approval requirements in 310 C.M.R. 7.02 (Regulation 7.02) of the Massachusetts SIP. The Sierra Club maintains that tunnel ventilation systems have been subject to Regulation 7.02 and that the adoption of this SIP revision would weaken the SIP by exempting tunnel ventilation systems from the requirements of Regulation 7.02. The Sierra Club also states that tunnel ventilation systems are "stationary sources" and consequently subject to the new source review and Prevention of Significant Deterioration (PSD) permitting requirements of the Act. Since the tunnel roadway ventilation system regulation does not meet the minimum requirements of a PSD or new source review permitting program, the Sierra Club comments that its adoption represents a weakening of the Massachusetts SIP and is inconsistent with the requirements of Parts C and D of the Act. Moreover, the Sierra Club states that subjecting tunnel ventilation systems to new source review requirements would further the Clean Air Act's purpose of requiring the installation of pollution control equipment on stationary sources. The Sierra Club has made these same arguments in the pending civil action *Sierra Club et al.* v. *Larson et al.*, Civil Action No. 91–10898C (D. Mass).

EPA has concluded that tunnel ventilation systems are not stationary sources subject to the PSD or new source review permitting requirements of the Act or Regulation 7.02 of the SIP and consequently the adoption of this SIP revision will not weaken, but will rather strengthen, the existing SIP. Tunnel ventilation systems, which do not generate their own emissions but rather simply funnel emissions from mobile sources, are not stationary sources within the meaning of the Clean Air Act. The Clean Air Act provides for means other than new source review and PSD to regulate emissions resulting directly from the internal combustion engines of motor vehicles. Because they are not stationary sources within the meaning of the Clean Air Act, tunnel ventilation systems are not subject to the new source review and PSD requirements of the SIP and the Act. Similarly, tunnel ventilation systems are not subject to Regulation 7.02 of the Massachusetts' SIP. The federally-approved Regulation 7.02 applies to the facilities listed at Subsection 7.02(4). Tunnel ventilation systems do not fall under any of the listed categories of facilities. Consequently, this SIP revision does not remove tunnel ventilation systems from any current requirements of the SIP or the Clean Air Act and therefore is not a weakening of such requirements.

In fact, the SIP revision will strengthen the SIP by contributing to overall state and federal strategies to reduce emissions from mobile sources in the Boston area. The revision requires certification that the construction and operation of a roadway tunnel ventilation system will not cause or exacerbate a violation of the National Ambient Air Quality Standards (NAAQS) or an actual or projected increase in the total amount of non-methane hydrocarbons measured within the project area when compared with the no-build alternative. Moreover, the tunnel ventilation certification process requires the monitoring of emissions and traffic data to ensure that the tunnel ventilation system continues to meet the certification criteria in the future. If the Massachusetts Department of Environmental Protection (DEP) finds that the certification criteria are being violated or are likely to be violated, the revision requires the operator of the tunnel ventilation system to submit a mitigation plan which identifies specific measures that the operator intends to implement to bring the ventilation system and the associated project area into compliance with the certification criteria.

DEP will then review and either accept or reject the plan. The terms of an accepted plan are incorporated into the tunnel ventilation system's operating certification. These requirements, as well as others in the revision, strengthen EPA's and the state's ability to regulate the overall emissions from mobile sources in the Boston area. The revision is consequently quite consistent with the purposes of the Clean Air Act.

The Sierra Club also comments that, because the regulation was not approved by the Governor and Council as required by Mass. Gen. Laws c. 111, § 142A, the state did not properly adopt the tunnel ventilation system regulation under state law and therefore the regulation cannot be approved by EPA as a SIP revision. EPA has concluded that the regulation was properly

[1] Although these supplemental comments were dated February 12, 1992, almost two weeks after the comment period on the Notice of Proposed Rulemaking closed, EPA has chosen to respond to the comments in the interest of fully addressing issues brought to the Agency's attention by the interested public.

adopted by the state. As indicated in the Massachusetts Secretary of State's attested certification of compliance with the state's administrative procedures, submitted to EPA with the proposed SIP revision, this regulation was adopted by DEP under its authority at Mass. Gen. Laws c. 111, §§ 142B and 142D. These statutory provisions authorize DEP to adopt such regulations without approval by the Governor and Council.

The Conservation Law Foundation submitted comments "strongly support[ing]" approval of the roadway tunnel ventilation system SIP revision. The organization did express concern over prompt, effective enforcement of the provisions. The Conservation Law Foundation urged EPA to approve the proposed SIP revision and then enforce its provisions.

EPA agrees that the tunnel ventilation system regulation, and any certification issued thereunder, need to be adequately enforced. EPA expects, in the first place, that DEP will ensure compliance with the regulation and any certification issued thereunder. In addition, EPA notes that federally-approved SIP provisions are enforceable by EPA under section 113 of the Clean Air Act and that, to the extent that DEP does not adequately enforce, EPA may choose to take additional steps to ensure compliance.

Final Action: EPA is approving the Commonwealth's regulation for certifying roadway tunnel ventilation systems in the Metropolitan Boston Air Pollution Control District *(310 C.M.R. 7.00 and 310 C.M.R. 7.38)*, as a revision to the Massachusetts SIP.

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).

EPA has submitted a request for a permanent waiver for Table 2 and 3 SIP Revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

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 December 7, 1992. 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 Clean Air Act section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Incorporation by reference, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

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

Dated: September 9, 1992.

Julie Belaga,

Regional Administrator, Region I.

Part 52 of chapter I, title 40 of the Code of the 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. 7401–7671q.

Subpart W—Massachusetts

2. Section 52.1120 is amended by adding paragraph (c)(96) to read as follows:

§ 52.1120 Identification of plan.

* * * * *

(c) * * *

(96) Revisions to the State Implementation Plan submitted by the Massachusetts Department of Environmental Protection on January 30, 1991.

(i) Incorporation by reference.

(A) Letter from the Massachusetts Department of Environmental Protection dated January 30, 1991 submitting a revision to the Massachusetts State Implementation Plan.

(B) Massachusetts Regulation 310 CMR 7.38, entitled "Certification of Tunnel Ventilation Systems in the Metropolitan Boston Air Pollution Control District," and amendment to 310 CMR 7.00, entitled "Definitions," effective in the Commonwealth of Massachusetts on January 18, 1991.

For the State of Massachusetts:

3. In § 52.1167 the table 52.1167 is amended by adding the following entries in numerical order:

§ 52.1167 EPA-approved Massachusetts State regulations.

* * * * *

TABLE 52.1167.—EPA—APPROVED RULES AND REGULATIONS

State citation	Title/subject	Date submitted by State	Date approved by EPA	Federal Register citation	52.1120(c)	Comments/unapproved sections
*	*	*	*	*	*	*
310CMR 7.00.	Definitions	1/30/91	October 8, 1992	[FR citation from published date].	96	Definitions of no-build alternative, project area, project roadway, and tunnel ventilation system.
*	*	*	*	*	*	*
310CMR 7.38.	Tunnel vent certification regulation.	1/30/91	October 8, 1992	[FR citation from published date].	96	Tunnel ventilation certification regulation for Boston metropolitan area.

[FR Doc. 92–24385 Filed 10–7–92; 8:45 am]

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40 CFR Part 52

[MA-09-02-5384; A-1-FRL-4510-3]

Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; Revision to Massachusetts' Automobile Surface Coating Regulation (MA-09-02-5384)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving portions of the State Implementation Plan (SIP) revisions submitted by the Commonwealth of Massachusetts which amend the Massachusetts Automobile Surface Coating Regulation, 310 CMR 7.18(7). Additionally, EPA is withdrawing its proposed disapproval of the compliance dates for the topcoat and final repair applications in the automobile surface coating regulation. The intended effect of this action is to approve portions of the Massachusetts revised SIP for ozone and withdraw EPA's proposed disapproval of the compliance dates for the topcoat and final repair applications. 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 November 9, 1992.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection, by appointment, during normal business hours 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; and Division of Air Quality Control, Department of Environmental Protection, One Winter Street, 7th Floor, Boston, MA 02108.

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

SUPPLEMENTARY INFORMATION: On October 12, 1990 (55 FR 41553), EPA published a Notice of Proposed Rulemaking (NPR) for the Commonwealth of Massachusetts. The NPR proposed approval of portions of Massachusetts's automobile surface coating regulation, 310 CMR 7.18(7), while also proposing disapproval of the compliance dates for the topcoat and final repair applications. Massachusetts submitted the formal SIP revision on August 17, 1989 and on June 7, 1991. The state submitted a letter on December 17, 1991 withdrawing a typographical error in the June 7, 1991 submittal for the emission limit for the primer-surfacer application.

Background

On May 25, 1988, EPA sent a letter to Michael Dukakis, then the Governor of Massachusetts, indicating that the Massachusetts SIP was substantially inadequate to attain the ozone standard. EPA requested that the state respond 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 included: (1) Correcting deficiencies and inconsistencies in existing regulations; (2) adopting regulations previously required or committed to but never adopted; and (3) updating the base emission inventory for those areas identified as nonattainment.

On June 16, 1988, EPA sent a letter to the acting director of the Massachusetts Department of the Environmental Quality Engineering's (now Massachusetts Department of Environmental Protection (DEP)) Division of Air Quality Control and identified the corrections that needed to be made in the existing regulations for the control of volatile organic compound (VOC) emissions. These corrections were necessary to make Massachusetts's SIP consistent with EPA guidance. The revised VOC regulations submitted by Massachusetts on August 17, 1989 and June 7, 1991 are in response to EPA's May 25 and June 16, 1988 letters.

On May 29, 1990 and October 12, 1990, EPA proposed approval of Massachusetts's August 17, 1989 submittal. EPA based this proposed approval on a determination that the submittal addressed most of the deficiencies identified in the SIP call and the fact that Massachusetts stated in discussions with EPA that they would address the remaining deficiencies outlined in the SIP call in the near future.

On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Pub. L. 101-549, 104 Stat. 2399, codified at 42 U.S.C. 7401—7671q. In section 182(a)(2)(A) of the amended Act, Congress codified the requirement that states revise their SIPS for ozone nonattainment areas so that they conform with EPA's preamendment guidance. Areas designated nonattainment before enactment of the Amendments and which retained that designation and were classified as marginal or above as of enactment are required to meet the RACT fix-up requirement. Under section 182(a)(2)(A), those areas were required by May 15, 1991, to correct RACT as it was required under preamended section 172(b) as that requirement was interpreted in preamendment guidance.[1] The SIP call letters interpreted that guidance and indicated corrections necessary for specific nonattainment areas. The entire state of Massachusetts is classified as a serious ozone nonattainment area and is, therefore, subject to the RACT fix-up requirement.

Massachusetts' August 17, 1989 submittal was made in accordance with EPA's pre-amendment guidance. Although the submittal predates the amendments, it serves to fulfill part of the RACT fix-up requirement. In addition, Massachusetts' June 7, 1991 submittal was made in accordance with the RACT fix-up requirement. Therefore, EPA is taking final action because this action is consistent with the guidance that existed at the time of the proposal and because it strengthens the existing SIP.

Content of Revised Regulations

The Massachusetts DEP made the following changes pursuant to the revisions requested in the NPR:

1. The State clarified the units of the emission limits in 310 CMR 7.18(7)(b). Furthermore, the state revised the compliance dates for topcoat application and final repair application to December 31, 1985. The state also clarified the footnote of "Emission Limitation" to explicitly state that compliance is determined on a line-by-line basis through the daily weighted average of the coatings used in each category for each separate line.

2. 310 CMR 7.18(7)(e) has been revised to add testing to determine topcoat emission rate, transfer efficiency and other relevant criteria in accordance with the protocols described in EPA document 450/3-88-018 entitled "Protocol for Determining the Daily Volatile Organic Compound Emission Rate of Automobile and Light-Duty Truck Topcoat Operations."

A more detailed description of these revisions and EPA's rationale for approving them was provided in the NPR and will not be restated here. EPA

[1] Among other things, the pre-amendment guidance consists of the VOC RACT portions of the Post-87 policy, 52 Fed. Reg. 45044 (Nov. 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies and Deviations, Clarification to Appendix D of November 24, 1987 Federal Register Notice" (Bluebook) (notice of availability published in the Federal Register on May 25, 1988); and the existing CTGs.

received two letters of public comment: one on its proposed partial approval and partial disapproval as published on October 12, 1990 and the other on an NPR published on July 22, 1988 (53 FR 27716) proposing approval of various VOC regulations submitted by the Commonwealth of Massachusetts.

Response to Public Comments

On August 22, 1988, General Motors Corporation (GM) submitted comments in response to the NPR published on July 22, 1988. Furthermore, on November 12, 1990, GM submitted comments on EPA's NPR partially approving the Massachusetts automobile surface coating regulations published on October 12, 1990. The comments submitted on August 22, 1988 were submitted in response to a notice of proposed rulemaking published in the **Federal Register** on July 22, 1988 (53 FR 27716) and finalized on March 10, 1989 (54 FR 10147). When EPA took final action on this submittal, EPA stated in the **Federal Register** that one comment letter was received on the amendment of the surface coating regulations for automobiles and miscellaneous metal parts and products. However, since EPA was not taking final action on those portions of the submittal, EPA stated that the comment letter would be addressed when EPA did take final action on those portions of the regulations. The August 17, 1989 and June 7, 1991 submittals supersede the amendments EPA proposed for approval on July 22, 1988. On October 12, 1990, EPA proposed partial approval and partial disapproval of the automobile surface coating regulation submitted on August 17, 1989. The notice listed amendments the state needed to make before EPA could take action. These amendments were submitted on June 7, 1991. Since the August 1989 and June 1991 submittals supersede the State's earlier rule of which EPA proposed approval and on which the comment was based, EPA is now responding to both letters.

Comments: GM states that the RACT limit for the surface coating of miscellaneous metal parts and products and automobile surface coating regulations should be expressed as pounds of volatile organic compounds (VOC) per gallon of solids applied. Furthermore, GM states that this expression of the RACT emission limit in terms of pounds of VOC per gallon solids applied is consistent with the approved EPA guidance "Protocol for Determining the Daily Volatile Organic Compound Emission Rate of Automobile and Light-Duty Truck Topcoat Operations."

Response: EPA agrees with the commenter that the emission limits for the miscellaneous metal parts and products and automobile surface coating regulations should be expressed as pounds of VOC per gallon of solids applied. This is stated in 310 CMR 7.18(7)(b), where the emission limit units for the primer application, primer surfacer application, and final repair application coating lines are "lbs. of VOC/gallon of solids applied." It is important to note, however, that "applied" as used in Massachusetts' VOC regulations for these emission limits means "as applied from the applicator."

Comments: GM further comments that the applicable emission limit for new sources would not be affected by this RACT regulation and would be determined by reference to the New Source Performance Standards and source permit.

Response: In a March 2, 1989 memorandum from G.T. Helms, Chief of the Ozone/Carbon Monoxide Branch to Steve Rothblatt, Chief of the Air and Radiation Branch, entitled "Reasonably Available Control Technology (RACT) for New Automobile Assembly Plants," G.T. Helms states that automobile assembly plants in ozone non-attainment areas should have VOC emission requirements that are at least as stringent as RACT.

EPA policy for sources in nonattainment areas which must plan for attainment is that compliance must be determined over no greater than a 24 hours period. Averaging over longer time periods may make planning for and achieving the ozone standard impossible, because of the need to restrict or plan for emissions on a daily basis. New Source Performance Standards (NSPS) for automobile and light duty truck surface coating operations mandate that on a facility-wide basis over a one month time period, emission limitations of 0.16 kilograms of VOC per liter of applied coating solids shall not be exceeded for each prime coat operation, and 1.47 kilograms of VOC per liter of applied coating solids shall not be exceeded for each topcoat operation.

Depending upon fluctuations of VOC contents and daily use at a given facility, RACT may be more stringent than the NSPS. The NSPS are not established in place of RACT and are not intended to represent RACT.

Massachusetts has followed that policy in its regulations. Regulation 310 CMR 7.18(1) states "310 CMR 7.18 shall apply in its entirety to persons who own, lease, operate or control any facility which emits volatile organic compounds (VOC)." Likewise, 310 CMR 7.18(7) "Automobile Surface Coating," states "No person who owns, leases, operates, or controls an automobile and/or light duty truck manufacturing plant, which emits in excess of 15 pounds per day of volatile organic compounds (VOC), shall cause, suffer, allow or permit emissions therefrom in excess of the emission limitations, on a daily weighted average basis, and within the schedule contained in 310 CMR 7.18(7)(b)." Regulation 310 CMR 7.18(7) does not exempt new or modified sources from complying with the emission limitations contained in 310 CMR 7.18(7)(b).

Additionally, Massachusetts's permit regulations, 310 CMR 7.02(2) requires that no approval would be issued in instances where "the emissions from such a facility would exceed an applicable emission limitation as specified in these regulations." Furthermore, 7.02(2)(a)2.g. states "that no approvals will be issued in instances where the emissions from such a facility of operation of such a facility would not represent Best Available Control Technology (BACT) provided that in no event is BACT any less stringent than any applicable emission limitation. Massachusetts's regulations are consistent with EPA policy and are approvable.

Comments: GM states that EPA should approve the compliance date extensions that Massachusetts submitted on August 17, 1989 as an amendment to its SIP. Additionally, GM believes that its Administrative Petition for Reconsideration of 46 FR 51386 filed with EPA on November 15, 1988 contains detailed explanations as to why these two RACT compliance deadlines were properly extended by the Commonwealth of Massachusetts.

Response: GM's Administrative Petition for Reconsideration filed on November 15, 1988 petitioned EPA to reconsider the notice published in the **Federal Register** on September 16, 1988 (53 FR 36011). EPA published a Denial of Petition for Reconsideration by GM in the **Federal Register** on October 23, 1991 (56 FR 54789), which denied GM's petition in full. Issues raised by GM in its Petition for Reconsideration were addressed in that notice.

Comments: GM notes a typographical error in the October 12, 1990 rulemaking. GM states that the date that the automobile surface coating regulation was originally approved was September 16, 1980. Additionally, GM states that footnote 2 in the Table 2 of the automobile surface coating regulation

which states that 15 lbs of VOC per gallon of solids deposited is equivalent to 4.5 lbs of VOC per gallon of solids applied should state that 15.1 lbs of VOC per gallon of solids applied is the equivalent level.

Response: EPA agrees that the date that the original rule was approved by EPA was September 16, 1980 and not September 16, 1990 as listed in the notice. However, EPA does not agree with the statement that GM makes concerning footnote 2. EPA stated in the NPR that: "Footnote 2 should further specify that 15 pounds of VOC per gallon of solids deposited, at a transfer efficiency of 30% is equivalent to 4.5 pounds of VOC per gallon of solids applied." This statement was not a technical evaluation of Massachusetts' calculation of the topcoat application emission rate, but rather a statement by EPA asking Massachusetts to clarify the emission unit for the topcoat application coating line. Footnote 2 of 310 CMR 7.18(7)(b) submitted by Massachusetts on August 17, 1989 states that:

"The emission limitation for the top coat operations should be considered in terms of pounds of VOC per gallon of solids deposited. For example, with a transfer efficiency of 30%, the above emission limitation (4.5 pounds of VOC per gallon of solids applied) is equivalent to 15 pounds of VOC per gallon of solids deposited."

In Massachusett's June 7, 1991 submittal of revised volatile organic compound regulations, section 7.18(7)(b) is revised so that the emission limitation for the topcoat application coating line is listed as "15 lbs of VOC/gallon of solids deposited."

Furthermore, the emission limitation is footnoted with the footnote stating "The emission limitation for topcoat application is equivalent to 4.5 lbs of VOC/gallon of solids applied at a transfer efficiency of 30%." EPA was not suggesting any change in the emission limitation for topcoat application, but rather requesting the state to move the emission limit specification from the footnote to the main text of the rule.

Final Action

EPA is approving the Massachusetts SIP revision containing 310 CMR 7.18(7), "automobile surface coating" which was submitted on August 17, 1989 and June 7, 1991. EPA is also withdrawing its proposed disapproval of the compliance dates for the topcoat and final repair applications because the state revised the compliance dates for the topcoat and final repair application consistent with the compliance dates previous approved on September 16, 1980 (45 FR 61293). This revision corrects portions of the deficiencies in Massachusetts' Ozone Attainment Plan.

In addition, although the August 17, 1989 submittal preceded the date of enactment of the Clean Air Act Amendments of 1990, EPA is today approving portions of that submittal as well as portions of the June 7, 1990 submittal, as meeting part of the requirements of section 182(a)(2)(A) of the amended Act. Massachusetts' revised regulations for automobile surface coating, although submitted in response to the SIP call letter, also fulfill part of the RACT fix-up requirement.

Because EPA proposed approval of the August 17, 1989 submittal prior to enactment, EPA did not propose approval based on the requirements of new section 182(a)(2)(A). However, EPA believes that the good cause exception to notice-and-comment rulemaking applies and that the Agency, therefore, is not required to repropose approval of these submittals as meeting section 182(a)(2)(A). The Agency's action on a SIP or SIP elements is rulemaking that is subject to the procedural requirements of the Administrative Procedure Act (APA). Section 553(a)(B) of the APA provides that the Agency need not provide notice and an opportunity for comment if the Agency for good cause determines that notice and comment are "impracticable, unnecessary, or contrary to the public interest."

Notice and comment are impracticable and unnecessary in the present circumstance. Section 182(a)(2)(A) does not impose new requirements on the subject nonattainment areas. Rather, section 182(a)(2)(A) codifies the corrections nonattainment areas needed to make subject to the EPA SIP call letters issued in 1987 and 1988. Because these Massachusetts SIP submittals meets portions of the SIP call and, therefore, is consistent with the applicable pre-amendment guidance, EPA believes that these submittals also necessarily meet the requirements of section 182(a)(2)(A) of the amended Act. In EPA's earlier proposed approval of the Massachusetts SIP, EPA provided notice and an opportunity for comment on the consistency of the state's rules with EPA's preenactment guidance. Since notice and an opportunity for comment have been provided on that set of issues, and section 182(a)(2)(A) does not expand those requirements, it is unnecessary to repeat that process. In addition, it is impracticable for the Agency to take such action because, in light of the statutory time constraints on acting on SIPs, such a process would divert valuable agency resources from action on the large number of SIPs addressing new substantive requirements.

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

Under section 307(b)(1) of the 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 December 7, 1992. 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 Commonwealth of Massachusetts was approved by the Director of the Federal Register on July 1, 1982.

Dated: September 15, 1992.

William K. Reilly,

Administrator.

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 is amended to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart W—Massachusetts

2. Section 52.1120 is amended by adding paragraph (c)(92) to read as follows:

§ 52.1120 Identification of plan.

* * * * *

(c) * * *

(92) Revisions to the State Implementation Plan submitted by the Massachusetts Department of Environmental Protection on August 17, 1989, June 7, 1991 and December 17, 1991.

(i) Incorporation by reference.

(A) Letters from the Massachusetts Department of Environmental Protection dated August 17, 1989 and June 7, 1991 submitting a revision to the

Massachusetts State Implementation Plan.

(B) Portions of regulation 310 CMR 7.18(7) for automobile surface coating as submitted on August 17, 1989 effective in the Commonwealth of Massachusetts on September 15, 1989.

(C) Portions of regulation 310 CMR 7.18(7) for automobile surface coating as submitted on June 7, 1991 effective in the Commonwealth of Massachusetts on June 21, 1991.

(ii) Additional materials.

(A) A letter dated December 17, 1991 from the Massachusetts Department of Environmental Protection withdrawing the emission limit for the Primer-surfacer application from the June 7, 1991 submittal.

(B) Nonregulatory portions of state submittal.

3. In § 52.1167 table 52.1167 is amended by adding the following entry to 310 CMR 7.18(7).

§ 52.1167 EPA-approved Massachusetts State regulations.

* * * * *

TABLE 52.1167.—EPA-APPROVED RULES AND REGULATIONS

State citation	Title/subject	Date submitted by State	Date approved by EPA	Federal Register citation	52.1120(c)	Comments/unapproved sections
*	*	*	*	*	*	*
310 CMR 7.18(7).	Automobile Surface Coating.	August 17, 1989, June 7, 1991.	October 8, 1992.....	[FR citation from published date].	92	
*	*	*	*	*	*	*

[FR Doc. 92-24386 Filed 10-7-92; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 80

[AMS-FRL-4520-2]

Regulation of Fuels and Fuel Additives: Standards for Reformulated Gasoline

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of application for extension of the Reformulated Gasoline Program to the Dallas/Fort Worth area in the State of Texas.

SUMMARY: This notice publishes the application by the Governor of the state of Texas to have the prohibition set forth in section 211(k)(5) of the Clean Air Act, as amended (the Act), applied to the Dallas/Fort Worth ozone nonattainment area. Under section 211(k)(6) the Administrator of EPA shall apply the prohibition against the sale of gasoline which has not been reformulated to be less polluting in an ozone nonattainment area upon the application of the governor of the state in which the nonattainment area is located.

DATES: The effective date of the prohibition described herein is January 1, 1995 (see the Supplementary Information section of today's notice for a discussion of the possible delay of this date).

ADDRESSES: Materials relevant to this Notice are contained in Public Docket No. A-91-02. This docket is located in room M-1500, Waterside Mall (ground floor), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The docket may be inspected from 8:30 a.m. until 12 noon and from 1:30 p.m. until 3 p.m. Monday through Friday. A reasonable fee may be charged by EPA for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Jean Marie Revelt, U.S. EPA (SDSB-12), Motor Vehicle Emission Laboratory, 2565 Plymouth Road, Ann Arbor, MI 48105, Telephone: (313) 741-7822.

SUPPLEMENTARY INFORMATION:

I. Background

As part of the Clean Air Act Amendments of 1990, Congress added a new subsection (k) to section 211 of the Clean Air Act. Subsection (k) prohibits the sale of gasoline that EPA has not certified as reformulated in the nine worst ozone nonattainment areas beginning January 1, 1995. To be certified as reformulated a gasoline must comply with the following formula requirements: oxygen content of at least 2.0 percent by weight; benzene content of no more than 1.0 percent by volume; and no heavy metals (with a possible waiver for metals other than lead). The gasoline must also achieve toxic and volatile organic compound emissions reductions equal to or exceeding the more stringent of a specified formula fuel or a performance standard.

Section 211(k)(10)(D) defines the areas covered by the reformulated gasoline program as the nine ozone nonattainment areas having a 1980 population in excess of 250,000 and having the highest ozone design values during the period 1987 through 1989. Applying those criteria, EPA has determined the nine covered areas to be the metropolitan areas including Los Angeles, Houston, New York City, Baltimore, Chicago, San Diego, Philadelphia, Hartford and Milwaukee. Under section 211(k)(10)(D), any area reclassified as a severe ozone nonattainment area under section 181(b) is also to be included in the reformulated gasoline program.

Any other ozone nonattainment area may be included in the program at the request of the governor of the state in which the area is located. Section 211(k)(6)(A) provides that upon the application of a governor, EPA shall apply the prohibition against selling conventional gasoline (gasoline EPA has not certified as reformulated) in any area in the governor's state which has been classified under subpart 2 of Part D of Title I of the Act as a Marginal, Moderate, Serious or Severe ozone nonattainment area.[1] Subparagraph 211(k)(6)(A) further provides that EPA is to apply the prohibition as of the date he "deems appropriate, not later than January 1, 1995, or 1 year after such application is received, whichever is later." In some cases the effective date may be extended for such an area as provided in section 211(k)(6)(B) based on a determination by EPA that there is "insufficient domestic capacity to produce" reformulated gasoline. Finally, EPA is to publish a governor's application in the **Federal Register**. To date, EPA has received and published applications from the Mayor of the District of Columbia and the Governors of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island and Virginia.

[1] EPA recently promulgated such designations pursuant to section 107(d)(4) of the Act (56 FR 56694; November 6, 1991).

EPA used the regulatory negotiation process in developing the requirements for reformulated gasoline. A supplemental notice of proposed rulemaking was published April 16, 1992 (57 FR 13416), which describes the consensus reached in that process on an outline for the reformulated gasoline program. The supplemental notice also describes the certification program for reformulated gasoline, the credits program for exceeding certain requirements, and the enforcement program, among other elements. A public hearing regarding the supplemental notice was held in Chicago, Illinois, on June 9–10, 1992. The comment period for the notice and supplemental notice closed on August 14, 1992.[2]

II. The Governor's Request

EPA received an application from the Hon. Ann W. Richards, Governor of the state of Texas, for the Dallas/Fort Worth ozone nonattainment area to be included in the reformulated gasoline program. Her application is set out in full below.

[State of Texas letterhead]

June 11, 1992.

Mr. William K. Reilly,
Administrator,
U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Dear Mr. Reilly: In accordance with Section 211(k), (6)(A) of the Federal Clean Air Act, I request that, beginning January 1, 1995, the prohibition applying to the sale of conventional gasoline be extended to the Dallas/Ft. Worth ozone nonattainment area; which includes Dallas, Denton, Collin, and Tarrant Counties. The Texas Air Control Board passed a resolution on May 8, 1992, requesting that I apply to you to require the use of reformulated gasoline in these counties.

The North Central Texas Council of Governments, the designated Metropolitan Planning Organization for the Dallas/Fort Worth area, has favorably considered the use of reformulated gasoline for the purpose of further reducing the production of ozone in that area. The contact person for the implementation of the reformulated gasoline program is: Russell Baier, Director, Mobile Source Division, Texas Air Control Board, Air Quality Planning Annex, 12118 North IH–35, Park 35 Technology Center, Building A, Austin, Texas 78753, (512) 908–1483, Fax: (512) 908–1500.

Sincerely,

Ann W Richards,

Governor

CC:

Mr B. J. Wynne, III, Regional Administrator, U.S.E.P.A., Region 6, Dallas
Mr. William R. Campbell, Executive Director, Texas Air Control Board

[2] See 57 FR 31165 (July 14, 1992).

III. Action

Pursuant to the governor's letter and the provisions of section 211(k)(6), the prohibitions of subsection 211(k)(5) will be applied to the Dallas/Fort Worth ozone nonattainment area beginning January 1, 1995 (unless delayed, as provided above). This area is classified as a moderate ozone nonattainment area.[3]

The application of the prohibitions to the Dallas/Fort Worth area cannot take effect any earlier than January 1, 1995 under section 211(k)(5) and cannot take effect any later than January 1, 1995, under section 211(k)(6)(A), unless the Administrator extends the effective date by rule under section 211(k)(6)(B).

Dated: September 30, 1992.

William K. Reilly,

Administrator.

[FR Doc. 92–24526 Filed 10–7–92; 8:45 am]

BILLING CODE 6560–50–M

[3] See 56 FR 56835 (November 6, 1991).

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101–16

[FPMR Temp. Reg. D–75 Supp. 1]

Governmentwide Real Property Asset Management

AGENCY: Office of Governmentwide Real Property Policy, GSA.

ACTION: Temporary regulation.

SUMMARY: This supplement to FPMR Temporary Regulation D–75 extends the expiration date to September 30, 1993. FPMR Temporary Regulation D–75 implements Executive Order 12411, of March 29, 1983, and Executive Order 12512, of April 29, 1985.

This regulation provides broad guidance in the planning, acquisition, management and disposal of real property and is not designed to supplant existing agency regulation. Rather, it serves as a general guide for asset management and provides the tools to maximize economy and efficiency within the Federal community, ensures the protection and maintenance of the Federal Government's assets, supports individual agency program goals, and ensures a unified Federal approach to real property asset management.

DATES: *Effective date:* This regulation is effective October 1, 1992.

Expiration Date: This regulation expires September 30, 1993.

FOR FURTHER INFORMATION CONTACT: James M. Cayce, Acting Director, Office of Governmentwide Real Property Policy (202–501–0507).

SUPPLEMENTARY INFORMATION: GSA has determined that this rule is not a major rule for the purposes of E.O. 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. Therefore, a Regulatory Impact Analysis has not been prepared. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and the consequences of this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

Regulatory Flexibility Act

The General Services Administration has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

List of Subjects in 41 CFR Part 101–16

Federal real property asset management.

GSA's authority for issuing this temporary regulation is contained in Executive Order 12411, Executive Order 12512 and in the Federal Property and Administrative Services Act of 1949 amended (40 U.S.C. 486(c)).

In 41 CFR chapter 101, this temporary regulation is added in the appendix at the end of subchapter D.

Dated: September 14, 1992.

Federal Property Management Regulations Temporary Regulation D–75 Supplement 1

To: Heads of Federal agencies.

Subject: Governmentwide Real Property Asset Management.

1. *Purpose.* This supplement extends the expiration date of FPMR Temporary Regulation D–75.

2. *Effective date.* October 1, 1992.

3. *Expiration date.* This supplement expires September 30, 1993.

4. *Explanation of change.* The expiration date of FPMR Temporary Regulation D–75 is revised to September 30, 1993.

Richard G. Austin,

Administrator of General Services.

[FR Doc. 92–24380 Filed 10–7–92; 8:45 am]

BILLING CODE 6820–34–M

FEDERAL MARITIME COMMISSION

46 CFR Parts 514 and 581

[Docket No. 92-21]

Amendments to Service Contracts

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: The Federal Maritime Commission amends its regulations in parts 514 and 581 to allow the parties to a filed service contract to amend the contract's "essential terms." The intent of this amendment is to create a more flexible service contract system in order to benefit carriers, U.S. shippers and consumers. Similarly situated shippers who had previously accessed the contract have the option of either continuing under the original contract or accessing the amended terms. Similarly situated shippers who had not previously accessed the contract may access the amended contract, in which case the shippers' minimum cargo volume obligation must be pro-rated according to the duration of the amended contract.

EFFECTIVE DATE: October 8, 1992.

FOR FURTHER INFORMATION CONTACT:

Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573, (202) 523-5740.
Bryant L. VanBrakle, Director, Bureau of Tariffs, Certification and Licensing, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573, (202) 523-5796.

SUPPLEMENTARY INFORMATION:

Background

By a Notice of Proposed Rulemaking ("NPR") published in the **Federal Register** on May 4, 1992 (57 FR 19,102), the Federal Maritime Commission ("FMC" or "Commission") proposed to amend its regulations to allow the parties to a filed service contract to amend the contract's "essential terms." Section 3(21) of the Shipping Act of 1984 ("1984 Act") defines a service contract as * * *

> * * * a contract between a shipper and an ocean common carrier or conference in which the shipper makes a commitment to provide a certain minimum quantity of cargo over a fixed time period, and the ocean common carrier or conference commits to a certain rate or rate schedule as well as a defined service level—such as, assured space, transit time, port rotation, or similar service features; the contract may also specify provisions in the event of nonperformance on the part of either party.

46 U.S.C. app. 1702(21). Section 8(c) of the 1984 Act requires that * * *

> * * * each [service] contract * * * shall be filed confidentially with the Commission, and at the same time, a concise statement of its essential terms shall be filed with the Commission and made available to the general public in tariff format, and those essential terms shall be available to all shippers similarly situated. The essential terms shall include—
>
> (1) the origin and destination port ranges in the case of port-to-port movements, and the origin and destination geographic areas in the case of through intermodal movements;
>
> (2) the commodity or commodities involved;
>
> (3) the minimum volume;
>
> (4) the line-haul rate;
>
> (5) the duration;
>
> (6) service commitments; and
>
> (7) the liquidated damages for nonperformance, if any.

Id. 1707(c)

The NPR noted that the Commission's service contract regulations already permit contract parties to change a contract's essential terms, once filed, in two ways. First, the parties may make retroactive corrections of clerical or administrative errors through a specified procedure: The request for permission to correct must be filed with the Commission within forty-five days of the contract's original filing; the filing party must submit an affidavit describing the circumstances that gave rise to the error; the other contract party must submit a statement concurring in the request for correction; and the access rights of similarly situated shippers are protected. 46 CFR 581.7(b). Second, contract signatories can provide for substantive modifications of the contract's essential terms through contingency clauses. *Id.* 581.5(a)(3)(viii). Similarly situated shippers have a right to access the contingency clauses as well as the basic essential terms, and the Commission has prescribed a procedure whereby similarly situated shippers are informed of changes in a service contract as a result of an activated contingency clause. *Id.* 581.6(b)(5).

Otherwise, however, the FMC's regulations presently provide that "[t]he essential terms originally set forth in a service contract may not be amended * * *." 46 CFR 581.7(a). The NPR recounted the history of this restriction as dating to November, 1984, when the Commission published final rules implementing the new service contract provisions of the 1984 Act. *Service Contracts; Loyalty Contracts; and Publishing and Filing of Tariffs by Common Carriers in the Foreign Commerce of the United States*, ____ F.M.C. ____, 22 S.R.R. 1414 (1984). The Commission believed the restriction was necessary to prevent unfairness to similarly situated shippers. *Id.* at 1432. The prohibition was carried forward in subsequent rule revisions. *Service Contracts*, ____ F.M.C. ____, 24 S.R.R. 277, 300 (1987).

The NPR then pointed out that the Commission's concerns in 1984 about potential unfairness, when service contracts were a new concept in ocean transportation, may not have been borne out by actual shipper experience in subsequent years. It noted that when the FMC surveyed shippers about the new Shipping Act during the preparation of its report in 1989 to the Advisory Commission on Conferences and Ocean Shipping, permitting service contracts to be amendable was identified by shippers as the most important change they would like to see in the Commission's regulation of service contracts. Further, the NPR stated, the Commission's own experience with service contracts has been that very few contracts are "me-too'd" by outside shippers, which calls into question whether the benefits of the present no-amendment regulation justify removal of a right freely held by contract parties at common law. The NPR also acknowledged that the original concern that amending service contracts might leave shippers unable to take advantage of an amended contract did not take into account the possibility that some shippers who had been unable to "me-too" an original contract might be able to "me-too" the contract as amended.

The NPR stated that the proposed rule was drafted to accommodate the desire for greater flexibility under service contracts with the statutory prerogatives of similarly situated shippers. Corresponding to the procedure already in place for corrections of administrative or clerical errors, shippers who have accessed a service contract would have the choice of continuing under their original "me-too" contracts or electing to amend their contracts in the same way as the basic contract parties. To protect shippers who were unable to meet the original essential terms of a service contract, but could meet the terms as modified, the proposed rule further provided that the essential terms of an "amended service contract" as well as an "initial service contract" would be made available to all other shippers or shippers' associations similarly situated. The proposed rule also made technical changes to reflect the redesignation of the former Bureau of Domestic Regulation as the Bureau of Tariffs, Certification and Licensing.

In addition, the NPR solicited comments on four other issues raised by the proposal to permit amendments to the essential terms of a service contract:

1. Should the ability to amend be limited to only certain essential terms (*e.g.*, volume, origin and destination points) but not others (*e.g.*, rates)?

2. Should the ability to amend a contract be limited in time, *e.g.*, only during the first half of the contract's period, or within 60 days of its filing with the Commission?

3. What term should the shipper accessing an amended contract receive: The full original contract term, or only the time remaining?

4. Could and should the Commission require that the filing of amendments to a service contract be accompanied by a statement of the reason for the amendments?

Commenters desiring a particular result in these or other related areas were requested to include suggested rule language.

Summary of Comments

A. Supporting Comments

Comments in support of the proposed rule were filed by a number of shippers and shipper organizations—The Agriculture Ocean Transport Coalition ("AgOTC"); the American Institute for Shippers Associations, Inc. ("AISA"); the American Paper Institute ("API"); Cargill, Incorporated; ConAgra, Inc.; Corning Incorporated; E.I. du Pont de Nemours and Company ("Du Pont"); Hiram Walker & Sons, Inc.; the National Industrial Traffic League ("NIT League"); Weyerhauser Paper Company; and Union Camp Corporation—one carrier, Orient Overseas Container Line, Ltd. ("OOCL"), and the U.S. Department of Transportation ("DOT").

These commenters argue that the NPR's reference to the common law of contracts, whereby parties are free to amend a contract as long as it remains executory, was appropriate and should guide the Commission's regulation of service contracts. They cite in this regard the provision of section 8(c) of the 1984 Act that gives exclusive jurisdiction over breach of service contract disputes to common law courts. In general, they argue that shippers should be able to restructure their service contracts when business conditions change or new opportunities arise.[1] DOT states:

> Within the confines of the Shipping Act of 1984, the Commission's proposal would allow contracting parties more of the freedom to modify their bargain that exists in other industries, while maintaining the statutory protection now mandated for similarly situated shippers. The new rule, in other words, embodies the approach to statutory administration that is most consistent with sound public policy: it implements ongoing legal requirements in a manner that minimizes regulatory burdens.

Comments at 2. Union Camp similarly views the proposed rule as giving service contract parties the maximum freedom possible under current law:

> Until such time as the proper contracting environment is created by Shipping Act amendments to limit conference antitrust immunity pertaining to service contracts and exempt contracts and exempt contracts from FMC jurisdiction, the Proposed Rule would bring contracts as close as regulatory change can to that environment.

Comments at 3.[2] ConAgra argues that any concerns about discrimination are not well-founded:

> In the unlikely event that the freedom to amend service contracts is abused so as to discriminate against similarly situated shippers, that will become readily apparent and the Commission will be able to deal with it.
>
> However, the freedom to amend service contracts should not be denied to shippers and carriers on the basis of the mere supposition that it might result in abuse, particularly when the shippers who are the supposed beneficiaries of the present prohibition are so overwhelmingly in favor of the right to amend service contracts.

Comments at 4–5.[3]

On the four related issues posed by the NPR, these commenters all oppose any restrictions on the essential terms eligible for amendment. API argues that "the ability to amend should not be limited to only certain essential terms, but rather, should extend to any and all aspects of a contract to which the parties mutually agree should be changed." Comments at 3 (emphasis in original).[4] Du Pont asserts that

> "flexibility to meet customer demands is of utmost importance * * * ." Comments at 1. Similarly, this group opposes any limits on when an essential term can be amended, urging that the Commission simply follow the common law rule noted in the NPR, *i.e.*, amendments should be permissible as long as the contract remains executory.

The question of what term should be available to a shipper "me-tooing" an amended contract caused some division. AgOTC[5] and API argue that outside shippers should not have a right to access an amended contract at all, because this would discourage amendments; under this approach, the statutory "me-too" right would apply only to original contracts, AgOTC Comments at 4; API Comments at 5. A few others would leave this matter up to the accessing shipper and the carrier to settle as they see fit (Union Camp, Hiram Walker and AISA[6]). Most contend that allowing the accessing shipper only the term remaining on the contract is "the fair approach." Du Pont Comments at 2. NIT League submits that "[t]o provide a [me-too] party with a term equal to the full original contract term would be an impermissible extension of the original contract term." Comments at 5. The possibility that the contract term itself may be the amended essential term accessed by an outside shipper was recognized only by DOT:

> * * * DOT submits that the time for performance should be treated identically to other contract terms, such as rates and service commitments. * * * Shippers who are similarly situated to the amended contract and who are not already participating in a "me too" arrangement would have their section 8(c) rights ensured if they are given the opportunity to avail themselves of the terms as subsequently modified, including the time allowed for performance by the amendments. In other words, regardless of whether new contracts expand, contract, or retain the time for performance contained in

[1] The same themes are sounded by OOCL, which states that service contracts should be brought "more into line as true contracts" and that "shippers and carriers should have greater commercial flexibility between themselves." Comments at 2.

[2] Union Camp is a leading manufacturer and exporter of paper packaging chemicals and building products. It states that in 1990 it shipped roughly 20,000 TEU's of containerized cargo to virtually all major world markets, and that over forty percent of its containerized exports move under service contracts. Comments at 1.

[3] ConAgra states that it is "a diversified agribusiness enterprise operating across the entire food chain." Comments at 2. Its various divisions and subsidiaries conduct extensive trade in agricultural commodities and foodstuffs all over the world. *ID.* at 2–4.

[4] API states that it is the national organization of the pulp, paper and paper bond industry, consisting of approximately 175 manufacturers who are substantial users of ocean common carriers in international transportation.

[5] AgOTC states that it is "a coalition comprised of individual companies, cooperatives, shipper associations and national and regional associations involved in the ocean transportation of farm, food, fiber and forest products." Comments at 1.

[6] AISA interpreted the NPR as requesting comments on whether, once a service contract is amended, similarly situated shippers should be able to (1) access the contract for a new full original term commencing from the date the contract has been "me-too'd"; (2) access the contract retroactively for a full term commencing from the original commencement date; or (3) access the contract for whatever term is remaining. AISA favors both (2) and (3). Comments at 6–7. However, only (1) and (3) were contemplated by the NPR, which meant to avoid retroactive amendments. Another complication is that the NPR and most commenting parties, including AISA, overlooked the possibility that the contract term itself may be the subject of amendment. See discussion of DOT Comments in the text *infra*.

an original contract, it is that expanded, contracted, or continued amount of time to which these shippers are entitled.

Comments at 3.

Lastly, these commenters unanimously oppose any requirement that the filing of amendments to a service contract be accompanied by a statement of the reasons for the amendments. Union Camp argues:

The reason an amendment is required could be the result of highly confidential corporate tactical or strategic planning. Requiring public disclosure of those plans could diminish the attractiveness of a business opportunity or investment. Trading off a contract amendment for confidentiality of reasoning would, in effect, produce the same result as no ability to amend at all.

Comments at 4. ConAgra makes a related point:

As long as the terms of the amended contract are facially lawful, an explanation of the business reason for their adoption is unnecessary and, indeed, irrelevant to the Commission's exercise of its regulatory responsibilities. In the event that the terms of any particular contract should be so unusual as to warrant explanation, the Commission can request it informally or, if it should become necessary, by more formal means. However, the amendment process should not be burdened by a requirement for explanation of every amendment when such explanation will be totally unnecessary in almost every instance.

Comments at 6.

B. Opposing comments

Commenters opposed to the proposed rule include the North Europe-USA Rate Agreement and the USA-North Europe Rate Agreement ("North Europe Conferences");[7] the Trans-Pacific Freight Conference of Japan and the Japan-Atlantic and Gulf Freight Conference ("Japan Conferences");[8] Crowley Maritime Corporation; and a large group of conferences headed by the Asia North America Eastbound Rate Agreement ("ANERA *et al.*").[9] The National Customs Brokers and Freight Forwarders Association of America "(NCBFFAA") also filed opposing comments.

In general, these commenters submit that the Commission's decision in 1984 not to permit prospective amendment to service contracts—other than through the contingency clause procedure—was correct and should not be reversed. The North Europe Conferences argue that the proposed rule is contrary to the letter and intent of section 8(c) of the 1984 Act and is therefore legally impermissible. They point to the statute's references to the shipper's "commitment" to provide "a certain minimum quantity" of cargo "over a fixed time period," the "certain rate" promised in exchange by the carrier, and the right of similarly situated shippers to access "those essential terms." A free right to amend is characterized as inconsistent with this statutory scheme. Comments at 16–18. The opposing commenters also contend that the NPR was incorrect in suggesting that service contracts should be treated as common law contracts. Crowley argues:

The rules of common carriage, not common law contract principles, form the touchstone of FMC regulation. Those rules impose restrictions on carriers and shippers to inhibit large shippers from turning their leverage over the market for transportation into a monopoly over the market for the goods they sell. Service contracts were not intended to create a path around basic common carrier requirements. The statute requires that essential shipping terms be published, as in regular tariff-based carriage, and that those terms be available to similarly situated shippers. This is a fundamental tenet of common carriage.

Comments at 3; see also Comments of North Europe Conferences at 18–20.

The opposing commenters further argue that allowing amendments would undermine the commercial stability provided by the service contract system, and would frustrate shippers' ability to "me-too" service contracts. ANERA *et al.* state:

Shippers and carriers enter into service contracts to ensure a certain amount of stability with regard to rates, service and cargo levels. Once contracts are entered into, carriers are assured a certain amount of cargo on specified routes and shippers are assured a certain level of service at specified rates. This knowledge allows both carriers and shippers to plan their businesses more effectively and efficiently, thereby adding to stability in the marketplace. This stability, in turn, forms the cushion that continues to ensure the tremendous number of service and competitive options that exist in ocean commerce * * *.

Allowing amendments to service contracts would undermine that stability, thereby removing many of the benefits of service contracts. Frequent adjustments to minimum cargo quantity commitments, geographic scopes, rates or carrier service levels would be disruptive to carrier and shipper stability. If amendments were allowed, there would be constant pressure from one party or the other to amend the contract to adjust to the ebbs and flows which occur in the market.

Comments at 3–4. Other commenters are more specific about which party would be causing such "constant pressure." Crowley predicts that the practical effect of the proposed rule "would be to allow shippers to coerce ever increasing, after-the-fact discounts out of carriers. Initial contracts would be meaningless, illusory commitments on the shippers' part * * *." Comments at 1.

These commenters offer examples intending to show how allowing amendments would work unfairness to original shippers, carriers and especially "me-too" shippers. The North Europe Conferences assume a service contract with a 500–TEU volume requirement and a duration of one calendar year. If the contract was amended on December 1 to provide for a 450–TEU volume requirement, they say, the original shipper * * *

* * * and any similarly situated shippers accessing the original contract, would have 12 months in which to meet that commitment whereas similarly situated shippers who had not accessed the original commitment would have the right to access the amended one and, if so, be required to meet the new 450 TEU minimum volume requirement in one month. Likewise, were the contract amended on December 1st by extending its duration for one month, shipper parties to the contract originally filed would have 13 months in which to ship 500 TEUs and similarly situated shippers not having accessed that contract would have the right to access the amended version and, if so, be required to ship 500 TEUs in two months.

Comments at 14.[10] ANERA *et al.* describe circumstances in which problems could be present even if the shipper's obligation was prorated:

Assume Shipper A has a two year contract beginning January 1, 1992 and terminating December 31, 1993. Shipper A's [volume obligation] is 2400 [forty-foot equivalent units ("FEU's")]. Four months before the contract expires, Shipper A and the conference or carrier agree to amend the contract by reducing the rates to reflect changes in the market and increased efficiencies that have occurred over the last year and a half. Due to the amendment, during the last four months, Shipper A is able to ship its remaining cargo at rates which are $200 below the original

[7] Sea-Land Service, Inc., a member of these conferences, did not join in their comments. Sea-Land filed its own comments, which fall into the group suggesting an alternative final rule, *infra*.

[8] Again, except Sea-Land.

[9] The other conferences included the "8900 Lines"; Israel Trade Conference; Mediterranean North Pacific Coast Freight Conference; South Europe/U.S.A. Freight Conference; United States/East Africa Conference; United States/South Africa Conference; and the U.S. Atlantic & Gulf Western Mediterranean Conference.

Sea-Land, OOCL and American President Lines ("APL"), which are members of some of these conferences, did not participate in their comments. OOCL, as already described, offered general support of the proposed rule. APL submitted comments suggesting a rule similar to Sea-Land's.

[10] The North Europe Conferences' comments above assume that a shipper accessing only the remaining term of an amended contract would not have its volume obligation pro-rated. The proposed rule did not explicitly cover that point.

rates. Shipper B accesses the contract for the remaining term, i.e., four months. The [volume obligation] is prorated, so Shipper B is obligated to ship 400 FEUs in four months at the reduced rate. This result is unfair to Shipper A because Shipper B never had the volume to justify Shipper A's original reduced rates. * * * The conference or carrier also suffers because it is forced to provide service at reduced rates to a shipper without sufficient volume to create economies of scale.

Comments at 10.

Two other arguments made by the opposing commenters are that the proposed rule is unnecessary, because the flexibility to make necessary changes in an existing contract is already provided by the present regulation allowing contingency clauses and because unforeseen changes can be accommodated by execution of a new contract, and that it would be extremely difficult for potential "me-too" shippers to continually monitor the service contracts of interest to them.

C. Comments Offering Qualified Support

A third group of commenters indicates support for—or at least acceptance of—a right to amend service contracts, subject to certain qualifications. These include Sea-Land, APL, the American Import Shippers Association, the Transpacific Westbound Rate Agreement ("TWRA"),[11] Hanjin Shipping Co., Ltd., Tropical Shipping and Construction Co., Ltd., and a group of conferences serving South America, Central America and the Caribbean area ("Latin America Conferences").[12] These commenters oppose amendments to contract terms governing rates and volume. Most would also bar amendments to contract duration and liquidated damages. This group would support (or at least accept) a final rule allowing amendments to terms governing origin and destination port ranges or geographic areas and the commodities involved, although TWRA cautions that "core commodity coverage" (Comments at 1) should not be amended and that only insignificant changes to that term should be permitted. APL adds that "if shippers would like to have the option to effect an increase in service * * *, changes in service commitments should not be precluded." Comments at 5.

These commenters also argue that some limit be placed on when amendments can be made during the life of a contract. Their contention is that overlooked factors will usually become apparent during the early weeks or months of a contract, that *bona fide* changes in circumstances occurring later can always be handled through execution of a new contract, and that amendments in the last stages of a contract will lead to abuse and will undermine the statutory rights of similarly situated shippers. Hanjin Shipping contends that amendments should be permitted only during the first half of a contract's term.

On the question of what term the shipper accessing an amended contract should receive, APL and TWRA argue that the shipper should receive only the time remaining on the contract. The Latin America Conferences offer a more detailed suggestion—similar to DOT's argument on this point—to take into account a situation where the contract's term itself has been amended:

> If the contract has been extended, or is extended after the shipper "me toos", the accessing shipper should be entitled to the extra time. If the contract is not extended, the accessing shipper should only be entitled to the same term as the original shipper.

Comments at 4.

Sea-Land supports a regulation requiring that the filing of an amendment be accompanied by a statement of the reasons for the amendment, but TWRA opposes the idea as meaningless.

Discussion

Upon consideration of the comments, the Commission has determined that, with clarifying amendments concerning the minimum volume obligation appropriate for a shipper accessing an amended contract (46 CFR 581.6(b)) and the form and manner of amendment filing (46 CFR 581.3(a)(2)(iv)(A) and 581.4(b)(1)(iii)), the proposed rule should be adopted as a final rule. We emphasize again that the current restriction at 46 CFR 581.7(a) against amendments to the essential terms of filed service contracts is not mandated by the language or legislative history of section 8(c) of the 1984 Act. Rather, it is a Commission-written increment to the statute that was designed to protect the rights of similarly situated shippers. After eight years of experience with service contracts and administration of section 8(c), the Commission wishes to adjust its policy in this area so that service contracts will be treated more like ordinary commercial contracts, which are freely amendable while executory. The present bar to amendments rests upon the assumption that the statutory right of similarly situated shippers to access a service contract will necessarily conflict with the common law right of the original contract parties to amend their agreement. Operating from that assumption, the current regulation protects the right to access at the expense of the right to amend. The new approach undertaken here seeks instead to allow both similarly situated shippers and original contract parties to exercise their rights in a mutually consistent fashion.

Many of the opposing comments expressed concern that original shippers will renege freely on their contract commitments if amendments are permitted, and that similarly situated shippers will enjoy unfair advantages if they are allowed to "me-too" an amended contract. The solutions to these anticipated problems, should they actually occur, are already available to the parties and do not need reinforcement from FMC regulations.[13] A shipper cannot unilaterally amend a service contract; like the original contract, an amendment must be the product of a free meeting of the minds between both sides. A carrier, therefore, may withhold consent from a proposed amendment that it considers unfair or one-sided. A shipper may have more leverage in negotiating for an amendment if it generates large amounts of cargo, but that is true for service contracts in general; Congress accepted the fact that large shippers may be able to obtain relatively attractive bargains from carriers when it enacted the service contract provisions of section 8(c). H.R. Rep. No. 53 (Part 1), 98th Cong., 1st Sess. 17 (1983). Ultimately, the amount of leverage any shipper can bring to bear in proposing an amendment to a service contract will be controlled by the market forces of supply and demand for cargo space. The Commission does not read section 8(c) as requiring us to shelter carriers from the market by maintenance of the no-amendment rule. Similarly, if an original

[11] Except Sea-Land.

[12] Venezuelan Maritime Association; Atlantic and Gulf/West Coast South America Conference; United States/Central America Liner Association; Central America Discussion Agreement; United States Atlantic & Gulf/Hispaniola Steamship Freight Association; Hispaniola Discussion Agreement; United States Atlantic Gulf/Southeastern Caribbean Steamship Freight Association; Southeastern Caribbean Discussion Agreement; Jamaica Discussion Agreement; United States/Panama Freight Association; PANAM Discussion Agreement; Puerto Rico/Caribbean Discussion Agreement; and the Caribbean and Central American Discussion Agreement.

Sea-Land does not participate in these comments either.

[13] However, in response to those commenters who expressed concern that permitting amendments will encourage abuse, the Commission intends to closely monitor amendment filings and will be prepared to take appropriate action should indications of such abuse develop.

shipper and a carrier are concerned that an amendment will trigger a "me-too" claim from another shipper, they have the option of simply foregoing the amendment.

In sum, the final rule does not limit the right to amend to only some essential terms or to only part of a contract's period.[14] The Commission is also persuaded that the rule should not require that a filed amendment be accompanied by a statement of explanation or justification.[15] With respect to the contract duration available to a shipper accessing an amended contract, although no changes to the proposed rule are necessary, we do wish to clarify that, as suggested by DOT, the duration term must be treated like any other essential term. A shipper accessing an amended service contract is entitled to whatever duration is stated in that contract, and the "me-too" contract must have the same expiration date as the basic contract. On a related matter, § 581.6(b)(1) is amended to clarify that, where a "me-too" shipper who had not accessed the original contract chooses to access the amended contract, the "me-too" shipper's minimum volume commitment must be pro-rated according to the fractional relation between the duration of the contract between the carrier and the original shipper and the duration of the contract between the carrier and the "me-too" shipper. Technical amendments have been made to 46 CFR 581.3(a)(2)(iv)(a) and 581.4(b)(1)(iii) regarding the form and manner of amendment filing.

After the May 4, 1992, publication of the NPR in this proceeding, an interim rule was published on August 12, 1992 (57 FR 36,248), in Docket No. 90–23, *Tariffs and Service Contracts* (46 CFR part 514), which implements the Commission's Automated Tariff Filing and Information System ("ATFI") and tracks part 581 in §§ 514.7 and 514.17. Accordingly, even though the Commission has requested further comment on the proper format for essential terms electronically filed, which will probably generate some further changes, the appropriate provisions of part 514 are amended herein in a manner similar to the changes to part 581 made herein.

Although the Commission, as an independent regulatory agency, is not subject to Executive Order 12291, dated February 17, 1981, it has nonetheless reviewed the rule in terms of that Order and has determined that this rule is not a "major rule" as defined in Executive Order 12291 because it will not result in:

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

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

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

The Federal Maritime Commission certifies, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), that this rule will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units and small government jurisdictions, because it does not increase business costs or prices for consumers and does not impose substantive restrictions on commercial activity.

The collection of information requirements contained in this regulation have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980, as amended, and have been assigned OMB control number 3072–0044. Public reporting burden for this amendment to allow the parties to a filed service contract to amend the contract's "essential terms" is estimated to average 13.64 hours per response. This includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, including suggestions for reducing this burden, to Norman W. Littlejohn, Director, Bureau of Administration, Federal Maritime Commission, Washington, DC 20573, and to the Office of Information and Regulatory Affairs, Attention: Desk Officer for the Federal Maritime Commission, Office of Management and Budget, Washington, DC 20503.

List of Subjects

46 CFR Part 514

Barges, Cargo, Cargo vessels, Exports, Fees and user charges, Freight, Harbors, Imports, Maritime carriers, Motor carriers, Ports, Rates and fares, Reporting and recordkeeping requirements, Surety bonds, Trucks, Water carriers, Waterfront facilities, Water transportation.

46 CFR Part 581

Administrative practice and procedure; Contracts; Maritime carriers; Rates and fares.

Therefore, pursuant to 5 U.S.C. 552 and 553; 31 U.S.C. 9701; 46 U.S.C. app. 804, 812, 814–817(a), 820, 833a, 841a, 843, 844, 845, 845a, 845b, 847, 1702–1712, 1714–1716, 1718, 1721 and 1722; and sec. 2(b) of Pub. L. 101–92, 103 Stat. 601, parts 514 and 581 of Title 46, Code of Federal Regulations, are amended as follows:

PART 514—[AMENDED]

1. The authority citation for part 514 is revised to read as follows:

Authority: 5 U.S.C. 552 and 553; 31 U.S.C. 9701; 46 U.S.C. app. 804, 812, 814–817(a), 820, 833a, 841a, 843, 844, 845, 845a, 845b, 847, 1702–1712, 1714–1716, 1718, 1721 and 1722; and sec. 2(b) of Pub. L. 101–92, 103 Stat. 601.

2. In section 514.2, the definition of "File or filing" (of service contracts) is revised to read as follows:

§ 514.2 Definitions.

* * * * *

File or filing (of service contracts or amendments thereto) means actual receipt at the Commission's Washington, DC offices. See § 514.7.

* * * * *

3. Section 514.7 is amended by revising paragraphs (a), (b), (f) introductory text, (f)(1), (f)(2)(i), (g)(2)(i), (h)(1)(i), (j)(1)(i), (j)(1)(ii), (j)(2) introductory text, (j)(2)(i), (j)(3)(i), (j)(3)(ii) introductory text, (j)(4) and (k), to read as follows:

§ 514.7 Service contracts in foreign commerce.

(a) *Scope and applicability.* Service contracts shall apply only to transportation of cargo moving from, to or through a United States port in the foreign commerce of the United States. While tariffs and the essential terms of service contracts are required to be filed electronically and made available to the public under subpart C of this part, service contracts themselves and amendments thereto (incorporating mandatory essential terms as described in § 514.17 and confidential names of shippers, etc.), as well as certain related

[14] The final rule includes contracts already on file with the Commission, but, as previously stated, n.6 *supra*, retroactive amendments are not permissible. For example, in the case of a filed service contract that calls for quarterly minimum volumes over calendar 1992, the parties may not file an amendment in November that changes the January–March volume requirement.

[15] The Commission assumes, however, that any contract amendment will be supported by mutual and valid consideration, as is the case at common law

notices, shall be filed in paper, hard copy format under this subpart and section.

(b) *Confidentiality.* All service contracts and amendments to service contracts filed with the Commission shall, to the full extent permitted by law, be held in confidence.

* * * * *

(f) *Availability of essential terms.* A statement of the essential terms of each initial and amended service contract, as set forth in tariff format, shall be made available for inspection by the general public pursuant to the requirements of this section and § 514.17.

(1) *Availability of terms.* The essential terms of an initial or amended service contract shall be made available for use in a contract to all other shippers or shippers' associations similarly situated, under the same terms and conditions, for a specified period of no less than thirty (30) days from the date of filing of the essential terms of the service contract or amendment thereto under § 514.17, as may be adjusted under paragraph (j)(4) of this section, except that, where a shipper or shippers' association not a party to the original contract exercises its right to access the amended contract, the minimum volume obligation for the accessing shipper or shippers' association shall be pro-rated according to the relation between the duration of the original (now amended) contract and the duration of the access contract. The conference or carrier may specify in the Essential Terms Publication the information which must accompany a me-too request and the procedures for submitting same.

(2) * * *

(i) Whenever a shipper or shippers' association desires to enter into an initial or amended service contract with the same essential terms as in another existing service contract, a request shall be submitted to the carrier or conference in writing.

* * * * *

(g) * * *

* * * * *

(2) * * *

(i) The making available of contingent or amended essential terms to similarly situated shippers under paragraphs (f)(1) or (f)(4) of this section;

* * * * *

(h) * * *

(1) * * *

(i) A unique service contract number, and consecutively numbered amendment number, if any, bearing the prefix "SC" (see § 514.17(d)(2));

* * * * *

(j) * * *

(1) * * *

(i) Within 20 days after the initial filing of an initial or amended service contract, the Commission may reject, or notify the filing party of the Commission's intent to reject, a service contract and/or statement of essential terms that does not conform to the form, content and filing requirements of the 1984 Act or this part. The Commission will provide an explanation of the reasons for such rejection or intent to reject.

(ii) Except for rejection on the ground that the service contract or amendment thereto was not filed within ten days of its essential terms, or other major deficiencies, such as not containing an essential term, the parties will have 20 days after the date appearing on the notice of intent to reject to resubmit the contract (in paper form under paragraph (g) of this section) and/or statement of essential terms (in electronic form under § 514.17), modified to satisfy the Commission's concerns.

(2) Rejection. The Commission may reject an initial or amended contract and/or statement of essential terms if:

(i) The initial or amended service contract is not filed within 10 days of the electronic filing of its associated essential terms;

* * * * *

(3) * * *

(i) Performance under a service contract or amendment thereto may begin without prior Commission authorization on the day its associated statement of essential terms is electronically filed, except for rejection under paragraph (j)(3)(ii) of this section;

(ii) When the filing parties receive notice that an initial or amended service contract or statement of essential terms has been rejected under paragraph (j)(2) of this section:

* * * * *

(4) *Period of availability.* The minimum 30-day period of availability of essential terms required by paragraph (f)(1) of this section shall be suspended on the date of the notice of intent to reject an initial or amended service contract and/or statement of essential terms under paragraph (j)(1)(i) of this section, or on the date of rejection under paragraphs (j)(1)(i) and (j)(2) of this section, whichever occurs first, and a new 30-day period shall commence upon the resubmission thereof under paragraph (j)(1)(ii) of this section.

(k) Modification, correction and cancellation of service contract terms.

(1) *Modifications.* (i) The essential terms originally set forth in a service contract may be amended by mutual agreement of the parties to the contract and shall be electronically filed with the Commission under § 514.17.

(ii) Amended service contracts shall be filed with the Commission pursuant to paragraph (g) of this section.

(iii) Any shipper or shippers' association that has previously entered into a service contract which is amended pursuant to this paragraph may elect to continue under that contract or adopt the modified essential terms as an amendment to its contract.

(2) *Corrections.* Either party to a filed service contract may request permission to correct clerical or administrative errors in the essential terms of a filed contract. Requests shall be filed, in duplicate, with the Commission's Office of the Secretary within 45 days of the contract's filing with the Commission and shall include:

(i) A letter of transmittal explaining the purpose of the submission, and providing specific information to identify the initial or amended service contract to be corrected.

(ii) A paper copy of the proposed correct essential terms. Corrections shall be indicated as follows:

(A) Matter being deleted shall be struck through; and

(B) Matter to be added shall immediately follow the language being deleted and be underscored;

(iii) An affidavit from the filing party attesting with specificity to the factual circumstances surrounding the clerical or administrative error, with reference to any supporting documentation;

(iv) Documents supporting the clerical or administrative error; and

(v) A brief statement from the other party to the contract concurring in the request for correction.

(3) Filing and availability of corrected materials.

(i) If the request for correction is granted, the carrier or conference shall file the corrected contract provisions under this section and/or a corrected statement of essential terms under § 514.17, using a special case number under § 514.9(b)(19). Corrected essential terms shall be made available to all other shippers or shippers' associations similarly situated for a specified period of no less than fifteen (15) days from the date of the filing of the corrected essential terms. The provisions of paragraphs (f)(1) to (f)(3) of this section shall otherwise apply.

(ii) The provisions of paragraph (k)(3)(i) of this section do not apply to clerical or administrative errors that appear only in a confidentially filed service contract but not also in the relevant essential terms.

(iii) Any shipper or shippers' association that has previously entered into a service contract that is corrected pursuant to this paragraph may elect to continue under that contract with or without the corrected essential terms.

(4) *Cancellation.* See paragraph (1) of this section and § 514.4(e)(2).

* * * * *

§ 514.8 [Amended]

4. In § 514.8, paragraph (n)(1)(iii)(G)(*3*) is removed.

5. Section 514.17 is amended by revising paragraphs (d)(2) and (d)(3), and the first sentence of paragraph (a)(1), to read as follows:

§ 514.17 Essential terms of service contracts in foreign commerce.

(a) * * *

(1) A concise statement of the essential terms (ETs) of every initial service contract (which is filed in paper form under § 514.7), or appropriate amendments to ETs resulting from any amendment of the filed service contract, shall be filed with the Commission by authorized persons (see § 514.4(d)(5)) and made available to the general public in electronic tariff format under this section. * * *

* * * * *

(d) * * *

* * * * *

(2) *ET (statement of essential terms) and SC (service contract and amendment) numbers.* The "ET Num" and "SC Num" (consecutive for amendments) are defined by the filer and shall be entered in the appropriate fields.

(3) *Period of availability.* The period of availability of the essential terms to similarly situated shippers shall be no less than thirty (30) days, i.e., from the "Filing date" (automatically entered by ATFI for initial or amendment filings under § 514.10(a)(2)) to the "Available until" date (automatically defaulted to 30 days from the filing date, but the filer can enter a later date, making the availability period longer).

* * * * *

§ 514.18 [Amended]

6. In § 514.18, in paragraphs (b) and (c)(3) introductory text, remove the citation "§ 514.7(k)(1)," and add in its place, the citation "§ 514.7(k)(2)."

PART 581—[AMENDED]

7. The authority citation for part 581 continues to read as follows:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 1702, 1706, 1707, 1709, 1712, 1714–1716, 1718 and 1722.

8. Section 581.3 is amended by revising paragraphs (a) introductory text, (a)(1)(i), (a)(2)(iv)(A), (a)(2)(iv)(B) and (a)(3)(i) to read as follows:

§ 581.3 Filing and maintenance of service contract materials.

(a) *Filing.* There shall be filed with the "Director, Bureau of Tariffs, Certification and Licensing," the following:

(1) * * *

(i) The outer envelope shall be addressed to the "Director, Bureau of Tariffs, Certification and Licensing, Federal Maritime Commission, Washington, DC 20573."

* * * * *

(2) * * *

(iv)(A) With an accompanying transmittal letter in an envelope which contains only matter relating to essential terms. In filing service contract amendments, the transmittal shall include the effective date and/or filing date of the original service contract;

(B) The envelope and the inside address on the transmittal letter are to be addressed to the "Director, Bureau of Tariffs, Certification and Licensing, Federal Maritime Commission, Washington, DC 20573."

(3) * * *

(i) The making available of contingent or amended essential terms to similarly situated shippers under § 581.6(b)(5) or § 581.6(b)(1);

* * * * *

9. Section 581.4 is amended by revising paragraphs (a)(1)(i), (b)(1)(iii) and the last sentence of (b)(2)(iii)(A) to read as follows:

§ 581.4 Form and manner.

(a) * * *

(1) * * *

(i) A unique service contract number, and consecutively numbered amendment number, if any, bearing the prefix "SC";

* * * * *

(b) * * *

(1) * * *

(iii) Be identified by an essential-terms number bearing the prefix "ET No.," which shall be located on the top of each page of the statement of essential terms. In the case of amended essential terms, only the changed pages shall be filed and each affected amended page shall be likewise identified by the essential-terms "ET No." and a consecutively numbered amendment suffix, *e.g.*, ET No. 86, Amendment No. 1; and

(iv) * * *

(2) * * *

(iii)(A) * * * The Index shall include for every statement of essential terms, the ET number and consecutively numbered ET amendment number, if any, as provided in paragraph (b)(1)(iii) of this section, the effective duration, as provided in § 581.5(a)(3)(i), the page and section number(s) [where used], and a column for cancellation dates which shall be used as an alternative to cancelling each individual page of the Essential Terms Publication; and

* * * * *

10. Section 581.6 is amended by revising paragraphs (a) and (b) (1) and (2) to read as follows:

§ 581.6 Availability of essential terms.

(a) *Availability of statement.* A statement of the essential terms of each initial or amended service contract as set forth in tariff format shall be made available to the general public pursuant to the requirements of this section and §§ 581.3, 581.4(b) and 581.5.

(b) *Availability of terms.* (1) The essential terms of an initial or amended service contract shall be made available to all other shippers or shippers' associations similarly situated under the same terms and conditions for a specified period of no less than thirty (30) days from the date of filing of the initial or amended service contract as may be adjusted under § 581.8(d); *provided that*, where a shipper or shippers' association accesses an amended service contract with an unchanged termination date, the minimum volume obligation for the accessing shipper or shippers' association must be pro-rated according to the relation between the original contract duration and the duration of the access contract.

(2) Whenever a shipper or shippers' association desires to enter into an initial or amended service contract with the same essential terms, a request shall be submitted to the carrier or conference in writing.

* * * * *

11. Section 581.7 paragraph (a) is revised to read as follows: § 581.7 Modification, termination or breach not covered by the contract.

For purposes of this part:

(a) *Modifications.* (1) The essential terms originally set forth in a service contract may be amended by mutual agreement of the parties to the contract.

(2) Amended service contracts shall be filed with the Commission pursuant to § 581.3(a) of this part.

(3) Any shipper or shippers' association that has previously entered into a service contract which is amended pursuant to this paragraph (a)

may elect to continue under that contract or adopt the modified essential terms as an amendment to its contract.

* * * * *

12. Section 581.8 is amended by revising paragraphs (a)(1), (b) introductory text, (c)(1), (c)(2) introductory text and (d) to read as follows:

§ 581.8 Contract rejection and notice; implementation.

(a) *Initial filing and notice of intent to reject.* (1) Within 20 days after the initial filing of an initial or amended service contract and statement of essential terms, the Commission may notify the filing party of the Commission's intent to reject a service contract and/or statement of essential terms that does not conform to the form, content and filing requirements of the Act or this part. The Commission will provide an explanation of the reasons for such intent to reject.

* * * * *

(b) *Rejection.* The Commission may reject an initial or amended contract and/or statement of essential terms if the objectionable contract or statement:

* * * * *

(c) *Implementation; prohibition and rerating.* (1) Performance under a service contract or amendment thereto may begin without prior Commission authorization on the day both the initial or amended contract and statement of essential terms are on file with the Commission, except as provided in paragraph (c)(2) of this section;

(2) When the filing parties receive notice that an initial or amended service contract, or statement of essential terms, has been rejected under paragraph (b) of this section:

* * * * *

(d) *Period of availability.* The minimum 30-day period of availability of essential terms required by § 581.6(b) shall be suspended on the date of the notice of intent to reject an initial or amended service contract and/or statement of essential terms under paragraph (a)(1) of this section and a new 30-day period shall commence upon the resubmission thereof under paragraph (a)(2) of this section.

13. Section 581.9 is revised to read as follows:

§ 581.9 Confidentiality.

All service contracts and amendments to service contracts filed with the Commission shall, to the full extent permitted by law, be held in confidence.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 92-24439 Filed 10-7-92; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87-121; DA 92-1325]

Contour Protection for Shore-Spaced Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: By this action, the Chief, Mass Media Bureau, pursuant to authority delegated in the Report and Order in this proceeding, removes the temporary restriction on FM applications which are short-spaced by more than 8 kilometers. The restriction is no longer necessary based on the staff's experience over the past three years in processing FM applications proposing directional antennas and the staff's refinement of numerous computer programs. The intended effect is to allow FM applicants to make full use of the rule allowing the use of directional antennas to provide adequate contour protection for short-spaced assignments.

EFFECTIVE DATE: November 9, 1992.

FOR FURTHER INFORMATION CONTACT: Charles Jay Iseman, Mass Media Bureau, Federal Communications Commission, (202) 632-6908.

SUPPLEMENTARY INFORMATION: The temporary restriction is contained in a note to § 73.215(e) of the Commission's rules.

Larry D. Eads,

Chief, Audio Services Division, Mass Media Bureau.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Final Rule

Part 73 of chapter I of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.215 [Amended]

2. Section 73.215 is amended by removing the note to paragraph (e).

[FR Doc. 92-24456 Filed 10-7-92; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB69

Endangered and Threatened Wildlife and Plants; Determination of Endangered or Threatened Status for 16 Plants From the Island of Molokai, Hawaii

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) determines endangered status pursuant to the Endangered Species Act of 1973, as amended (Act), for 15 plants: *Bidens wiebkei* (ko'oko'olau), *Brighamia rockii* (pua 'ala), *Canavalia molokaiensis* ('awikiwiki), *Clermontia oblongifolia* ssp. *brevipes* ('oha wai), *Cyanea mannii* (haha), *Cyanea procera* (haha), *Hedyotis mannii* (pilo), *Hibiscus arnottianus* ssp. *immaculatus* (koki'o ke'oke'o), *Melicope reflexa* (alani), *Phyllostegia mannii* (no common name (NCN)), *Pritchardia munroi* (loulu), *Schiedea lydgatei* (NCN), *Silene alexandri* (NCN), *Silene lanceolata* (NCN), and *Stenogyne bifida* (NCN). The Service also determines threatened status for one plant, *Tetramolopium rockii* (NCN). Fourteen of the 16 taxa are known to be extant only on the island of Molokai, Hawaii; one species also is found on the island of Hawaii, the other is also on Lanai. Fifteen of these taxa are known from East Molokai and one is also known from West Molokai. The 16 plant taxa and their habitats have been variously affected and are threatened by one or more of the following: Habitat degradation and/or predation by wild, feral, or domestic animals (axis deer, goats, pigs, sheep, and cattle); competition for space, light, water, and nutrients by naturalized, alien vegetation; habitat loss from fires; predation by rats; human recreational activities; and military training exercises. Because of the depauperate number of extant individuals and their severely restricted distributions, populations of these taxa are subject to an increased likelihood of extinction from stochastic events. This rule

implements the protection and recovery provisions provided by the Act for these plants.

EFFECTIVE DATE: November 9, 1992.

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, Pacific Islands Office, 300 Ala Moana Boulevard, room 6307, P.O. Box 50167, Honolulu, Hawaii 96850.

FOR FURTHER INFORMATION CONTACT: Derral R. Herbst, at the above address (808/541-2749 or FTS 8+808+541-2749).

SUPPLEMENTARY INFORMATION:

Background

Bidens wiebkei, Brighamia rockii, Canavalia molokaiensis, Clermontia oblongifolia ssp. *brevipes, Cyanea mannii, Cyanea procera, Hibiscus arnottianus* ssp. *immaculatus, Melicope reflexa, Phyllostegia mannii, Pritchardia munroi, Schiedea lydgatei, Silene alexandri, Stenogyne bifida,* and *Tetramolopium rockii are* currently known only from the island of Molokai, Hawaii. *Silene lanceolata* is found on both Molokai and the island of Hawaii, and *Hedyotis mannii* is found on both Molokai and the island of Lanai.

The island of Molokai, the fifth largest in the Hawaiian island chain, is approximately 38 miles (mi) (61 kilometers (km)) long, up to 10 mi wide, and encompasses an area of about 266 square (sq) mi (688 sq km) (Foote *et al.* 1972, Plasch 1985). Three shield volcanoes make up most of the land mass of Molokai: West Molokai Mountain, East Molokai Mountain, and a volcano that formed Kalaupapa Peninsula (Department of Geography, University of Hawaii 1983). Molokai also can be divided into three major sections: The West Molokai section, comprising West Molokai Mountain; the central Molokai section or Hoolehua Plain formed between the two large mountain masses; and the East Molokai section, incorporating East Molokai Mountain and Kalaupapa Peninsula (Foote *et al.* 1972).

The taller and larger East Molokai Mountain rises 4,970 feet (ft) (1,813 meters (m)) above sea level (Walker 1990) and comprises roughly 50 percent of the island's land area. Topographically, the windward side of East Molokai differs from the leeward side. Precipitous cliffs line the northern windward coast with deep inaccessible valleys dissecting the coastline. The annual rainfall on the windward side is 75 to over 150 inches (in) (200 to over 375 centimeters (cm)), distributed throughout the year. The soils are poorly drained and high in organic matter. The gulches and valleys are usually very steep, but sometimes gently sloping (Foote *et. al.* 1972). Much of the native vegetation on the northern part of East Molokai is intact because of its relative inaccessibility to humans and animals (Culliney 1988), although destructive ungulates have begun to enter the coastline in recent years (Joel Lau, The Nature Conservancy of Hawaii (TNCH), pers. comm., 1990). *Brighamia rockii, Canavalia molokaiensis, Hibiscus arnottianus* ssp. *immaculatus,* and *Stenogyne bifida* extend through various windward vegetation communities, from Coastal Dry Communities along the northern coast to the Montane Mesic Communities found inland on that side of the island. Halawa, on Molokai's extreme eastern end, has the same soil types as the windward side of the island. *Bidens wiebkei* is the only plant taxon of the 16 included in this final rule that grows in the Lowland to Montane Mesic Shrublands and Forests found on this section of the island.

Although Molokai's windward side receives most of the island's rainfall, some falls onto the upper slopes of the leeward (southern) side, decreasing as elevation decreases, and resulting in diverse leeward communities: from wet forests to dry shrub and grasslands. The average annual rainfall on the leeward side of East Molokai is between 30 and 50 in (80 and 130 cm), mostly falling between November and April. The gently sloping to very steep topography of upland regions has predominantly well drained and medium-textured soils. *Clermontia oblongifolia* ssp. *brevipes, Cyanea mannii, Cyanea procera, Hedyotis mannii, Melicope reflexa, Phyllostega mannii, Pritchardia munroi, Schiedea lydgatei, Silene alexandri,* and *Silene lanceolata* are found in habitats that extend from upper elevation Montane Wet Forests down to the Lowland Dry Communities on the leeward side of the island.

On the northwestern portion of East Molokai is Kalaupapa Peninsula, created after most of the island had been formed. Kalaupapa is the site of a Hansen's Disease settlement operated by the State Department of Health but with a cooperative agreement with the National Park Service. One population of *Tetramolopium rockii* is located along its ash-covered, basaltic coastline.

With the advent of cattle ranching and later pineapple cultivation, most of Molokai, particularly West Molokai and East Molokai's southern section, was converted to pasture land. The only remaining large tracts of native vegetation are found within the Molokai Forest Reserve on the upper elevation portions of East Molokai; most of the plant taxa in this rule are restricted to this forest reserve. *Tetramolopium rockii,* the only taxon found on West Molokai, is restricted to coastal calcareous sand dunes on the island's northeastern corner, where the impacts of ranching activities and development have been quite limited This Coastal Dry Community extends from sea level to 1,000 ft (300 m) in elevation and has an annual rainfall of 10 to 40 in (250 to 1,000 millimeters (mm))

Of the 16 taxa included in this rule, *Silene lanceolata* and *Hedyotis mannii* are the only species that are currently found on an island other than Molokai The Hawaii Island populations of *S. lanceolata* grow in the saddle region between Mauna Kea and Mauna Loa Mountains. Hawaii's two largest volcanoes. The Montane Dry Shrub and Grassland communities to which this species belongs extend into the subalpine zone, from 1,600 to 9,500 ft (500 to 2,900 m) in elevation with annual rainfall between 12 and 40 in (300 and 1,000 mm) (Gagne and Cuddihy 1990). The Lanai Island population of *H. mannii* grows in two gulches of Lanaihale. The vegetation communities of the area in which this species is found range from Lowland Wet Shrubland to Lowland Wet Forest. These communities range in elevation from 330 to 3,950 ft (100 to 1,200 m) with an annual rainfall between 60 and 240 in (150 to 600 cm) (Gagne and Cuddihy 1990).

The land that supports these 16 plant taxa is owned by the State of Hawaii, the Federal government, and private entities. The three State agencies are the Department of Land and Natural Resources (including the Natural Area Reserves System and Forest Reserves), the Department of Health, and the Department of Hawaiian Home Lands, the last two of which include cooperative management agreements with the National Park Service. Federally owned land consists of the Pohakuloa Training Area (PTA) on the island of Hawaii, under the jurisdiction of the U.S. Army. Among various private owners are The Nature Conservancy of Hawaii and a private owner with a conservation easement with that conservation organization.

Discussion of the 16 Taxa Included in This Rule

Bidens wiebkei was named by Earl Edward Sherff in honor of Henry Wiebke, a school principal on Molokai, who, with Otto Degener, discovered the plant in 1928 (Sherff 1928b). Sherff (1928a) named *Bidens campylotheca* var. *nematocera* based on Wilhelm

Hillebrand's (1888) description of an unnamed variety of *Campylotheca grandiflora* from Molokai; he later raised this taxon to specific status and published the combination *Bidens nematocera* (Sherff 1935a). Hillebrand's type, the only specimen of *B. nematocera* collected, was deposited in Berlin and destroyed during World War II. In the current treatment of the genus, Fred R. Ganders and Kenneth M. Nagata (1990) tentatively consider *B. nematocera* to be synonymous with *B. wiebkei*.

Bidens wiebkei, a member of the aster family (Asteraceae), is a perennial herb which is somewhat woody at the base and grows from 1.6 to 3.3 ft (0.5 to 1 m) tall. The opposite, pinnately compound leaves are 2.8 to 5.1 in (7 to 13 cm) long and each has three to seven leaflets, 1 to 3 in (2.5 to 8 cm) long and 0.4 to 1 in (1 to 2.5 cm) wide. Flower heads are arranged on side branches in clusters of usually 10 to 30, each 0.6 to 1 in (1.6 to 2.5 cm) in diameter and comprising 4 to 6 sterile, yellow ray florets, about 0.5 in (10 to 12 mm) long and 0.08 to 0.2 in (2 to 5 mm) wide, and 9 to 18 bisexual, yellow disk florets. Fruits are brownish-black achenes (dry, one-seeded fruits), which are curved or twisted and winged and measure 0.2 to 0.4 in (6 to 9 mm) long and 0.04 to 0.08 in (0.9 to 2 mm) wide. This plant is distinguished from other *Bidens* species which grow on Molokai by its erect habit and the curved or twisted, winged achenes (Degener and Sherff 1932a, 1932b; Ganders and Nagata 1990).

Historically, *Bidens wiebkei* was known from Pelekunu and the easternmost section of Molokai at Halawa (Hawaii Heritage Program (HHP) 1990a1, 1990a6). It is still found near Halawa and was recently discovered on Puu Kolekole, just south of its historical range, on privately owned land (HHP 1990a1 to 1990a5). The five known populations of this species are scattered along steep, exposed slopes (Gagne and Cuddihy 1990; HHP 1990a2, 1990a3, 1990a5) in *Metrosideros polymorpha* ('ohi'a) dominated mesic shrublands and forests at 820 to 3,450 ft (250 to 1,050 m) in elevation (Ganders and Nagata 1990), extending over a distance of 2.5 by 1 mi (4 by 1.6 km), and numbering no more than 60 individuals. Other associated plant species include *Antidesma* (hame), *Nestegis sandwicensis* (olopua), *Pisonia* (papala kepau), and *Scaevola gaudichaudii* (naupaka kuahiwi) (Cuddihy *et al.* 1982, HHP 1990a5). The major threats to *Bidens wiebkei* include habitat degradation and possible predation by deer and feral goats, competition with alien plants (*Melinus minutiflora* (molasses grass) and *Schinus terebinthifolius* (Christmas berry)), and fire. Damage or vandalism by humans of those plants found along trails is also a serious threat.

Asa Gray (Mann 1868) described *Brighamia insignis* based upon alcohol-preserved flowers and fruits collected by William Tufts Brigham on Molokai and a dried specimen collected on Kauai or Niihau by Ezechiel Jules Remy. Brigham's bottled material has since been lost. In his monograph, Harold St. John (1969) named plants collected on Molokai *B. rockii* and *B. rockii* f. *longiloba*, based, respectively, upon specimens collected by Francis Raymond Fosberg and Charles Noyes Forbes. The specific epithet was chosen to honor Joseph F. Rock. St. John (1969) also described *B. remyi*, based upon a specimen collected on Maui by Remy. In the current treatment of the genus, Thomas G. Lammers (1990) recognizes only two species: *B. rockii* for plants which presently can be found on Molokai and possibly for those which were formerly found on Lanai and Maui, and *B. insignis* for the Kauai and Niihau plants.

Brighamia rockii, a member of the bellflower family (Campanulaceae), grows as an unbranched plant 3.3 to 16 ft (1 to 5 m) tall with a thickened, succulent stem which tapers from the base. The fleshy, oval leaves are widest at their tips and are arranged in a rosette at the top of the plant. They measure 2.4 to 8.7 in (6 to 22 cm) long and 2 to 6 in (5 to 15 cm) wide. The fragrant flowers are clustered in groups of three to eight in the leaf axils (the point between the leaf and the stem). Each flower cluster is on a stalk 1.4 to 3.0 in (3.5 to 7.5 cm) long, and each flower is on a stalk 0.2 to 0.5 in (6 to 12 mm) long. The green basal portion of the flower (hypanthium) has 10 ribs and is topped by 5 calyx lobes 0.01 to 0.3 in (2.5 to 8 mm) long. The petals are fused into a green to yellowish-green tube 3.1 to 5.1 in (8 to 13 cm) long and 0.1 to 0.2 in (0.2 to 0.4 cm) wide which flares into five white, elliptic lobes 0.7 to 1.5 in (1.7 to 3.7 cm) long and 0.3 to 0.5 in (0.8 to 1.3 cm) wide. The fruit is a capsule 0.5 to 0.8 in (13 to 20 mm) long, 0.3 to 0.4 in (7 to 10 mm) wide, and 0.1 to 0.2 in (3 to 4 mm) thick which contains numerous seeds about 0.05 in (1.1 to 1.2 mm) long. This species is a member of a unique endemic Hawaiian genus with only one other species, found on Kauai, from which it differs by the color of its petals, its longer calyx lobes, and its shorter flower stalks (Lammers 1990, St. John 1969).

Brighamia rockii once ranged along the northern coast of East Molokai from Kalaupapa to Halawa and may possibly have grown on Lanai and Maui (HHP 1990b1, 1990b2, 1990b4; Lammers 1990). Today its range has decreased to scattered populations on steep, inaccessible sea cliffs along East Molokai's northern coastline from Anapuhi Beach to Wailau Valley on private land, and on the relatively inaccessible State-owned sea stack of Huelo, east of Anapuhi Beach (HHP 1990b3, 1990b5 to 1990b8; Hawaii Plant Conservation Center (HPCC) 1990a). The 5 known populations of *Brighamia rockii* that extend over this 6.5 mi (10.5 km) long stretch total fewer than 200 individuals (HHP 1990b3, 1990b5 to 1990b8). The plants are found in rock crevices on steep sea cliffs, often within the spray zone, in Coastal Dry to Mesic Forests or Shrublands at an elevation of sea level to 1,540 ft (0 to 470 m) with such associated species as 'ohi'a, *Canthium odoratum* (alahe'e), *Diospyros sandwicensis* (lama), *Osteomeles anthyllidifolia* ('ulei), and *Scaevola* (naupaka) (HHP 1990b1 to 1990b3, 1990b5 to 1990b7; HPCC 1990a; Lammers 1990). Ungulate damage (and possibly predation) by deer and goats poses a serious threat to *Brighamia rockii*. Although there is no evidence that rats feed on the fruits, rats are a potential threat as evidenced by predation on related Hawaiian genera. Competition with the alien plant Christmas berry is also a potential threat.

Forbes first collected *Canavalia molokaiensis* on Molokai in 1912, and 50 years later Otto Degener, Isa Degener, and J. Sauer described the species (Degener *et al.* 1962). Fosberg (1966) reduced several Hawaiian species of the genus to varieties, resulting in the name *C. galeata* var. *molokaiensis* for this taxon. In his revision of the Hawaiian taxa of the genus, St. John (1970) accepted *C. molokaiensis* and published two additional names, *C. peninsularis* and C. stenophylla, for Molokai plants. In the current treatment (Wagner and Herbst 1990), however, only *C. molokaiensis* is recognized.

Canavalia molokaiensis, a member of the pea family (Fabaceae), is a perennial climbing herb with twining branches. Each leaf is made up of three lance-shaped or sometimes oval leaflets which usually measure 1.4 to 3 in (3.5 to 8 cm) long and 0.5 to 2.1 in (1.3 to 5.4 cm) wide. Four to 15 flowers are arranged along a stalk 1.2 to 3.5 in (3 to 9 cm) long. The calyx (fused sepals), which is 0.8 to 1.1 in (20 to 28 mm) long, comprises a larger upper lip with two lobes and a smaller lower lip with three lobes. The five rose-

purple petals vary from 1.4 to 1.9 in (36 to 47 mm) in length. The flattened pods, 4.7 to 6.3 in (12 to 16 cm) long and 0.9 to 1.4 in (2.3 to 3.5 cm) wide, enclose flattened, dark reddish-brown, oblongelliptic seeds which are 0.7 to 0.9 in (17 to 22 mm) long and about 0.5 in (12 to 14 mm) wide. The only species of its genus found on Molokai, this plant can be distinguished from others in the genus by its narrower leaflets and its larger, rose-purple flowers (Degener *et al.* 1962, Sauer 1964, Wagner and Herbst 1990).

Historically, *Canavalia molokaiensis* was known from East Molokai, at Kalaupapa, Pelekunu, and farther south in Kahuaawi Gulch and the region of Manawai (HHP 1990cl to 1990c3, 1990c9). It now has a more restricted range: from Kalaupapa to Waialeia, Kaunakakai, and Kamakou (HHP 1990c3 to 1990c10). This species typically grows in exposed dry sites on steep slopes in mesic shrublands and forests at 2,790 to 3,050 ft (850 to 930 m) in elevation (HHP 1990c7, 1990c10; Wagner and Herbst 1990). The 7 known populations, which contain an estimated 50 individuals, are on State and private land and are distributed over a 7 by 3.5 mi (11 by 5.5 km) area. The largest population of roughly 20 plants lies within a 0.2 acre (ac) (930 sq m) area (J. Lau, pers. comm., 1990). Associated plant species include 'ohi'a, *Chamaesyce* ('akoko), *Dodonaea viscosa* ('a'ali'i), *Styphelia tameiameiae* (pukiawe), and *Wikstroemia* ('akia) (Cuddihy *et al.* 1982, HHP 1990c5). Feral ungulates such as goats and pigs degrade the habitat of *Canavalia molokaiensis* extensively and pose an immediate threat to this species. Predation on a related species of *Canavalia* suggests that goats may possibly consume this species. Competition with the alien plant, molasses grass, is also an immediate threat.

Franz Elfried Wimmer (1943) described *Clermontia oblongifolia* f. *brevipes* based upon a specimen collected by Forbes on Molokai in 1912. The name of the form refers to the plant's short leaves, leaf stalks, and flower stalks. Lammers (1988) raised this taxon to the subspecific level when he published the new combination *C. oblongifolia* ssp. *brevipes*.

Clermontia oblongifolia ssp. *brevipes*, a member of the bellflower family, is a terrestrial shrub or tree which reaches a height of 6.6 to 23 ft (2 to 7 m). The leaves, on petioles 0.7 to 1.2 in (1.8 to 3 cm) long, are lance-shaped; have thickened, rounded teeth; and reach a length of 2.8 to 4.3 in (7 to 11 cm) and a width of 0.8 to 2 in (2 to 5 cm). Two or sometimes three flowers are grouped together on a stalk 0.2 to 0.4 in (5 to 10 mm) long, each flower having a stalk 0.4 to 1.8 in (1 to 4.5 cm) long. The flower is 2.4 to 3.1 in (6 to 7.8 cm) long; the calyx and corolla are similar in size and appearance, and each forms an arched tube which is greenish-white or purplish on the outside and white or cream colored on the inside. The nearly spherical, orange fruit is a berry, 0.7 to 1.2 in (17 to 30 mm) long. This species is distinguished from others in the genus by the structure of its calyx and corolla as well as by the lengths of the flower, the floral lobes, and the green hypanthium. This subspecies differs from others of the species by the shape of its leaves and the lengths of its leaves, leaf stalks, and flower stalks (Lammers 1988, 1990).

Clermontia oblongifolia ssp. *brevipes* is known from a single population located in the southeastern part of TNCH's Kamakou Preserve, East Molokai, where it occurs on private land (Cuddihy *et al.* 1982). This population was last seen in 1982, and its size is unknown. The other known population, also from the Kamakou area, has not been seen for over 40 years and may have been extirpated (HHP 1990d2). Other than these two populations, the historical range is not known. This taxon typically grows in shallow soil on gulch slopes in wet 'ohi'a-dominated forests at elevations between 3,500 and 3,900 ft (1,100 and 1,200 m) (1990d2; J. Lau, pers. comm., 1990). Associated plant species include *Cheirodendron trigynum* ('olapa) (J. Lau, pers. comm., 1990). Feral pigs are an immediate threat to the habitat of the single remaining population of *Clermontia oblongifolia* ssp. *brevipes*. Its limited number makes the taxon vulnerable to extinction by a single stochastic event. Predation on related species suggests that rats may possibly feed on the fruit or plant parts of this taxon.

Brigham named *Delissea mannii* in honor of Horace Mann, Jr., with whom he collected the plant on Molokai in the 1860s and in whose "Enumeration" Brigham published the name (Mann 1867). Hillebrand (1888) transferred the taxon to the genus *Cyanea*, resulting in the name *Cyanea mannii*.

Cyanea mannii, a member of the bellflower family, is a branched shrub 5 to 10 ft (1.5 to 3 m) tall. The leaves are narrowly elliptic or lance-shaped, 4.7 to 8.3 in (12 to 21 cm) long and 1 to 2 in (2.5 to 5 cm) wide, and have petioles 0.9 to 3.9 in (2.2 to 10 cm) long and hardened teeth along the leaf margins. Each flower cluster, arising from the axil of a leaf on a stalk 0.8 to 1.4 in (20 to 35 mm) long, comprises 6 to 12 flowers, each on a stalk 0.3 to 0.5 in (8 to 12 mm) long. Each flower has a smooth, green hypanthium which measures about 0.2 in (4 to 6 mm) long and 0.1 to 0.2 in (3 to 5 mm) wide and is topped by triangular calyx lobes 0.1 to 0.2 in (3 to 5 mm) long and 0.08 to 0.1 in (2 to 3 mm) wide. The purplish corolla forms a nearly upright tube 1.2 to 1.4 in (30 to 35 mm) long and 0.1 to 0.2 in (3 to 4 mm) wide, which ends in five spreading lobes. Berries have not been observed. This species is distinguished from the seven other species of the genus on Molokai by a combination of the following characters: A branched, woody habit; leaves with small, hardened, marginal teeth; and a purplish corolla (Lammers 1990, Rock 1919, Wimmer 1943).

Historically, *Cyanea mannii* was known only from Kalae on East Molokai (HHP 1990e2). In 1984, a single plant was discovered by Joan Aidem west of Puu Kolekole on East Molokai on privately owned land (HHP 1990e1; Lammers 1990; Edwin Misaki, TNCH, pers. comm., 1991). Since then, five populations have been discovered in the east and west forks of Kawela Gulch within Kamakou Preserve on East Molokai. The 6 populations are distributed over an area of about 2 by 0.8 mi (3.2 by 1.2 km) and total at least 40 individuals (E. Misaki, pers. comm., 1991). This species typically grows on the sides of deep gulches in 'ohi'a-dominated mesic to wet forests at elevations of about 3,300 to 4,000 ft (1,000 to 1,220 m) (HHP 1990e1; Lammers 1990; E. Misaki, pers. comm., 1991). Associated plant species include 'akia, 'olapa, *Dicranopteris linearis* (uluhe), and *Vaccinium* ('ohelo) (E. Misaki, pers. comm., 1991). Feral pigs threaten the habitat of *Cyanea mannii*. Rodents such as rats may feed on the fruit or other parts of the plant, as shown by predation on related species. Because of the small number of remaining individuals, one stochastic event could extirpate a significant proportion of the populations.

Hillebrand discovered *Cyanea procera* on Molokai and formed the specific epithet from a Latin word meaning "tall," in reference to the height of the plant (Hillebrand 1888). St. John (1987, St. John and Takeuchi 1987), believing there to be no generic distinction between *Cyanea* and *Delissea*, transferred the species to the genus *Delissea*, the older of the two generic names, creating *D. procera*. The current treatment, however, maintains the separation of the two genera (Lammers 1990).

Cyanea procera, a member of the bellflower family, is a palmlike tree 10lO

to 30 ft (3 to 9 m) tall with stalkless, lance-shaped leaves 24 to 30 in (60 to 75 cm) long and 3.9 to 6.7 in (10 to 17 cm) wide with tiny hardened teeth along the margins. Each flower cluster has a stalk 1.0 to 1.6 in (25 to 40 mm) long and comprises 10 to 20 flowers, each on a stalk 0.2 to 0.4 in (6 to 10 mm) long. Each flower has a hypanthium, 0.6 to 0.8 in (15 to 20 mm) in length and 0.3 to 0.5 in (8 to 13 mm) in width, topped by shallow triangular calyx lobes 0.1 to 0.2 in (3 to 4 mm) long and about 0.2 in (4 to 5 mm) wide. The purplish corolla forms a nearly upright or slightly curved tube 2.4 to 3.1 in (60 to 80 mm) long and 0.2 to 0.4 in (6 to 11 mm) wide, which ends in five downwardly curving lobes which make the flower appear one-lipped. The ellipse- or egg-shaped berries are 1.2 to 1.8 in (3.0 to 4.5 cm) long and 0.8 to 1.1 in (2.0 to 2.8 cm) wide. This species can be distinguished from other species of the genus and from *C. mannii* by its growth habit, its sessile leaves, and the single-lipped appearance of the corolla (Lammers 1990, Rock 1919, Wimmer 1943).

Historically, *Cyanea procera* was known only from an unspecified site in the Kamalo region of East Molokai (HHP 1991a) until its discovery in 1987 at Puu O Kaeha, west of Kamalo on private land. Two individuals were found in a wet 'ohi'a-dominated forest at an elevation of 3,480 ft (1,060 m). The plants grow within 6.5 ft (2 m) of each other on a steep rock wall with thin soil on the southwest slope of a narrow gulch. Associated plant species include various species of *Asplenium, Coprosma ochracea* (pilo), *Pipturus albidus* (mamaki), and *Touchardia latifolia* (olona) (David Lorence, National Tropical Botanical Garden, pers. comm., 1991). In 1991, two additional individuals were discovered above a waterfall at about 4,000 ft (1,220 m) elevation in Waikolu Valley (J. Lau *in litt.*, 1991). Goats were observed in the area of this population, and the sides of the gulch where they grow are eroding. Only four plants of *Cyanea procera* are known to exist, making this species vulnerable to extinction from stochastic events. Like other *Cyanea* species and related genera, *C. procera* is potentially threatened by predation by rats. Habitat degradation by feral pigs is a potential threat.

Based upon a specimen he collected with Mann on West Maui, Brigham described *Kadua laxiflora* in Mann's list of 1867. In his revision of *Hedyotis*, Fosberg (1943) included *Kadua* in the genus *Hedyotis*, and he published the following names, which are synonymized under *Hedyotis mannii* in the current treatment of the genus (Wagner *et al.* 1990): *H. mannii* var. *laxiflora, H. mannii* var. *munroi, H. mannii* var. *scaposa, H. molokaiensis, H. thyrsoidea*, and *H. thyrsoidea* var. *hillebrandii* (Fosberg 1943), as well as *H. mannii* var. *cuspidata* (Fosberg 1956).

Hedyotis mannii, a member of the coffee family (Rubiaceae), is a perennial plant with smooth, usually erect stems 1 to 2 ft (30 to 60 cm) long which are woody at the base and four-angled or -winged. The leaves are opposite, thin in texture, elliptic to sometimes lanceshaped, and are usually 3 to 7 in (8 to 18 cm) long and 1 to 2.6 in (2.5 to 6.5 cm) wide. Stipules (leaf-like appendages), which are attached to the slightly winged leaf stalks where they join and clasp the stem, are triangular, 0.2 to 0.6 in (5 to 14 mm) long, and have a point usually 0.2 to 0.4 in (4 to 11 mm) long. Flowers are arranged in loose clusters up to 1 ft (30 cm) long at the ends of the stems and are either bisexual or female. The green hypanthium is top-shaped, about 0.05 in (1 to 1.5 mm) long, with sepals 0.06 to 0.1 in (1.5 to 3 mm) long and 0.04 to 0.08 in (1 to 2 mm) wide at the top. The greenish-white, fleshy petals are fused into a trumpets shaped tube 0.2 to 0.6 in (5 to 14 mm) long. Capsules are topshaped and measure 0.08 to 0.1 in (2 to 3 mm) long and about 0.1 in (3 to 4 mm) in diameter. This species' growth habit; its quadrangular or winged stems; the shape, size, and texture of its leaves; and its dry capsule which opens when mature separate it from other species of the genus (Hillebrand 1888, Wagner *et al.* 1990).

Hedyotis mannii was once widely scattered on three islands: Lanai, West Maui, and Molokai (HHP 1990f2 to 1990f10). After not being seen for 50 years, this species was rediscovered in 1987 by Steve Perlman on private land in Kawela Gulch on East Molokai (HHP 1990f1). Only two plants are known to exist in this area (Center for Plant Conservation (CPC) 1991). In 1991, an additional nine plants of this species were discovered on the island of Lanai: five mature and three juvenile plants were found at an elevation of 3,150 ft (960 m) at the head of Hauola Gulch, and a single mature plant at 2,640 ft (805 m) elevation in the gulch between Waialala and Kunoa Gulches (J. Lau, *in litt.* 1991). *Hedyotis mannii* typically grows on dark, narrow, rocky gulch walls in mesic and perhaps wet forests (Wagner *et al.* 1990) at 490 to 3,450 ft (150 to 1,050 m) in elevation (HHP 1990f1 to 1990f10). Associated plant species include mamaki, *Cibotium* (hapu'u), *Cyanea* (haha), and *Psychotria* (kopiko) (HHP 1990f1). The limited number of individuals of *Hedyotis mannii* makes it extremely vulnerable to extinction by stochastic events. Feral pigs and alien plants such as molasses grass degrade the habitat of this species and contribute to its vulnerability.

Sister Margaret James Roe (1961) described *Hibiscus immaculatus* based upon specimens collected by Forbes on Molokai in 1912. The specific epithet refers to the plant's pure white flowers. In his current treatment of the genus, David M. Bates regards the taxon as *Hibiscus arnottianus* ssp. *immaculatus* (Bates 1990, Wagner *et al.* 1989).

Hibiscus arnottianus ssp. *immaculatus*, a member of the hibiscus family (Malvaceae), is a tree up to 10 ft (3 m) tall with alternate, oval, toothed leaves measuring 2 to 2.8 in (5 to 7 cm) long and 1.6 to 2.6 in (4 to 6.5 cm) wide. Six lance-shaped bracts, 0.2 to 0.3 in (5 to 8 mm) long, are found under each of the faintly fragrant flowers, which are arranged singly near the ends of the branches. The calyx is 1 to 1.2 in (2.5 to 3.0 cm) long and cleft into five teeth with long, narrow points. The flaring petals are white and measure 3.1 to 4.3 in (8 to 11 cm) long and 1 to 1.4 in (2.5 to 3.5 cm) wide. Anthers, on spreading filament tips 0.4 to 0.8 in (1 to 2 cm) long, are arranged along the upper third of the white staminal column, which measures 4 to 5.5 in (10 to 14 cm) in length. Capsules are enclosed by the sepals and contain 0.2 in (4 mm) long seeds which are covered with yellowish-brown hair. This subspecies is distinguished from other native Hawaiian members of the genus by its white petals and white staminal column (Bates 1990; Neal 1965; Rock 1913; Roe 1959, 1961; St. John 1981).

Hibiscus arnottianus ssp. *immaculatus* once ranged from Waihanau Valley east to Papalaua Valley on East Molokai (HHP 1990g3, 1990g4). This taxon is now confined to a 3 mi (5 km) stretch of the northern coast of East Molokai from Waiehu to between Papalaua and Wailau valleys (Bates 1990; HHP 1990g1, 1990g2, 1990g5) on private and State land. The 4 populations, scattered along steep sea cliffs with native plant species such as alahe'e, hame, lama, mamaki, and 'ohi'a, are believed to total no more than 50 individuals (HHP 1990g1, 1990g5; HPCC 1990b). *Hibiscus arnottianus* ssp. *immaculatus* typically occurs in mesic forests between 50 and 1,600 ft (15 and 480 m) in elevation (Bates 1990, HHP 1990g1 to 1990g5, HPCC 1990b). The major threats to *Hibiscus arnottianus* spp. *immaculatus* are habitat destruction by feral goats and the small number of remaining populations.

St. John (1944) described and named *Pelea reflexa* based upon a specimen Rock collected on Molokai in 1910. The specific epithet refers to the slightly reflexed capsules. After further study of the genus, Thomas G. Hartley and Benjamin C. Stone (1989) placed *Pelea* into synonymy with *Melicope*, resulting in the new combination *M. reflexa* (Wagner *et al.* 1990).

Melicope reflexa, a member of the citrus family (Rutaceae), is a sprawling shrub 3.3 to 10 ft (1 to 3 m) tall with short, yellowish-brown, short-lived hairs on new growth. The opposite, thin, and leathery leaves are elliptical and measure 3.1 to 5.5 in (8 to 14 cm) long and 1.6 to 2.8 in (4 to 7 cm) wide. Flowers arise singly or in clusters of two or three from the leaf axil. The flower cluster has a stalk 0.1 to 0.6 in (3 to 15 mm) long, and each flower is on a stalk 0.6 to 0.8 in (15 to 20 mm) long. Male flowers have not been seen, but female flowers are made up of four overlapping sepals about 0.1 in (3 to 4 mm) long; four petals about 0.2 in (4.8 mm) long; an eight-lobed nectary disk; eight reduced, nonfunctional stamens; and a style about 0.2 in (4 mm) long. The capsules are 0.8 to 1.3 in (20 to 33 mm) wide with four sections 0.4 to 0.7 in (10 to 17 mm) long which are fused to each other along about one-fourth of their length. One or two glossy black seeds, about 0.3 in (7 to 8 mm) long, are found in each section of the capsule. This species' opposite leaves with leaf stalks usually over 0.4 in (1 cm) long, its larger leaves and fruit, and the partially fused sections of its capsule separate it from other species of the genus (Stone *et al.* 1990).

Historically, *Melicope reflexa* occurred from a ridge between Hanalilolilo and Pepeopae in Kamakou Preserve to as far east as Halawa on East Molokai (HHP 1990h1, 1990h2, 1990h5 to 1990h7). The 4 remaining populations of fewer than a total of 1,000 individuals are on private land at the headwall of Waikolu Valley, Wailau-Mapulehu summit and Kukuinui Ridge, and at Honomuni, and are distributed over a distance of about 7.5 mi (12 km) (HHP 1990h2 to 1990h4). *Melicope reflexa* typically grows in wet 'ohi'a-dominated forests with native trees such as 'olapa at elevations between 2,490 and 3,900 ft (760 and 1,190 m) (Stone *et al.* 1990). Major threats to *Melicope reflexa* include habitat degradation by ungulates (axis deer and feral pigs) and competition with the alien plant *Clidemia hirta* (Koster's curse). Because this species is known from a single restricted area, it is possible for one human-caused or natural event to destroy all or a significant portion of the extant individuals. Predation by deer or pigs is a potential threat in areas inhabited by these animals.

Mann (1868) published the name *Stenogyne parviflora* for a plant he and Brigham collected on Haleakala, Maui. In 1934, Sherff transferred this taxon to the genus *Phyllostegia;* as the name *P. parviflora* had previously been used for another species, he selected a new name *P. mannii*, for the taxon (Sherff 1934b). In the same year, Sherff (1934a) published the name *Phyllostegia racemosa* var. *bryanii* for the plants from the island of Molokai. In the current treatment (Wagner *et al.* 1990), *P. mannii* is the name applied to both the Molokai plants and specimens of the apparently extinct Maui plants.

Phyllostegia mannii, a nonaromatic member of the mint family (Lamiaceae), is a climbing vine with many-branched, four-sided, hairy stems. The opposite, hairy leaves, which are shaped like narrow triangles or narrow triangular ovals, measure 0.8 to 2.2 in (2 to 5.5 cm) long and 0.3 to 0.9 in (0.7 to 2.3 cm) wide and have coarsely toothed margins. Clusters of four to six flowers are arranged in each of several false whorls along an unbranched flowering stem 1.6 to 6 in (4 to 15 cm) long. The calyx is a bell-shaped, lobed structure. The slightly curved, two-lipped corolla tube is about 0.3 in (7 to 8 mm) long and is thought to be white. The fleshy, dark-green to black nutlets are 0.08 to 0.1 in (2 to 2.5 mm) long. This species is distinguished from others in the genus by its hairiness; its thin, narrow leaves which are not pinnately divided; and the usually six flowers per false whorl in a terminal inflorescence (Wagner *et al.* 1990).

Historically, *Phyllostegia mannii* was found from Hanalilolilo to Ohialele on East Molokai and at Ukulele on East Maui (HHP 1990i2 to 1990i8). It has not been seen on Maui for over 70 years and is apparently extinct on that island (Lammers 1990). This species is now known only from Hanalilolilo within Kamakou Preserve on privately owned land (HHP 1990i1). The only currently known population contains four individuals. It grows in shaded sites in sometimes foggy and windswept, wet, open, 'ohi'a-dominated forests with a native shrub and tree fern (hapu'u) understory (HHP 1990i1 to 1990i3) at 3,300 to 5,000 ft (1,010 to 1,525 m) in elevation (Wagner *et al.* 1990). Associated plant species include 'olapa, a few native ferns, and *Hedyotis* (manono). The only known population of *Phyllostegia mannii* is threatened by feral pigs. Because of the small number of individuals, a natural or human-caused event could extirpate all or a significant portion of the population.

Joseph F. Rock discovered a new palm on Molokai in 1920 and named it *Pritchardia munroi* in honor of James Munro, manager of Molokai Ranch (Beccari and Rock 1921).

Pritchardia munroi, a member of the palm family (Arecaceae), is a tree about 13 to 16 ft (4 to 5 m) tall with a trunk up to about 7.8 in (20 cm) in diameter. The leaf blade is about 35 in (88 cm) long and has a petiole about 33 in (85 cm) long. The leaves and petioles have scattered, mostly deciduous scales and hairs, somewhat larger on the lower leaf ribs. The leaves are deeply divided into segments which have long, drooping tips. Numerous bisexual or functionally male flowers are arranged in clusters on hairy, branching stalks about 20 in (52 cm) long which originate at the leaf bases. The flower consists of a cup-shaped, three-lobed calyx; three petals; six stamens; and a three-lobed stigma. The mature fruit is shiny, black, nearly spherical, and about 0.8 in (2 to 2.2 cm) in diameter. This species is distinguished from others of the genus by its relatively smooth leaves; the grayish-brown hair on the inflorescence stalks, which are shorter than the petioles; and the small size of the fruits (Beccari and Rock 1921, Read and Hodel 1990, St. John 1981).

Historically, *Pritchardia munroi* was found in leeward East Molokai, above Kamalo and near Kapuaokoolau (HHP 1990j1, Read and Hodel 1990). The last known wild specimen grows near the base of a small ravine in remnant dry to mesic forest at an elevation of about 2,000 ft (610 m) on privately owned land (Garnett 1989, HHP 1990j1, Read and Hodel 1990). Associated plant species include 'a'ali'i, 'ohi'a, pukiawe, and *Pleomele aurea* (hala pepe) (Garnett 1989, HHP 1990j1). A variety of threats affects the only known wild individual of *Pritchardia munroi*. Ungulates (axis deer, goats, and pigs) continue to degrade the habitat around its fenced enclosure and prevent the establishment of seedlings. Other serious threats include fire and predation of seeds by rats. The one known wild individual is vulnerable to extinction in its natural habitat because a single stochastic event could destroy the plant.

Hillebrand (1888) described *Schiedea lydgatei*, naming it in honor of the Reverend John M. Lydgate, who, as a student, accompanied Hillebrand on collecting trips. Later, Otto Degener and Sherff (Sherff 1944) described a new variety of the taxon, naming it variety *attenuata*. No infraspecific taxa are

recognized in the most recent treatment of the species (Wagner *et al.* 1990).

Schiedea lydgatei, a member of the pink family (Caryophyllaceae), is a low, hairless perennial plant with branched stems 4 to 16 in (10 to 40 cm) long which are woody at the base. The opposite, three-veined leaves are elliptic, 0.8 to 1.8 in (2 to 4.5 cm) long, and 0.2 to 0.6 in (0.6 to 1.5 cm) wide. Bisexual flowers are arranged in loosely spreading clusters 4 to 6.6 in (10 to 17 cm) long. The flowers comprise usually 5 distinct but overlapping, narrowly oval, green sepals, 0.1 to 0.2 in (3 to 4.5 mm) long; 5 nectaries about 0.1 in (2.5 to 3 mm) long; 10 stamens; and usually 3 styles. Petals are lacking. The capsules are about 0.2 in (4 to 5.5 mm) long and open when mature to reveal dark reddish-brown seeds about 0.03 in (0.8 mm) long. The opposite, thin, three-veined leaves with petioles and the smooth, open flower clusters with relatively larger, green sepals separate this species from other members of the genus (Degener and Degener 1956, Sherff 1944, Wagner *et al.* 1990).

Historically, *Schiedea lydgatei* was found in Kalae, Poholua, Makolelau, and Ohia Gulch on East Molokai (HHP 1990k2, 1990k4, 1990k7, 1990k8). This species is now known from five scattered populations in a more restricted area in Makakupaia, Kawela, and Makolelau. The 5 populations are distributed over an area of less than 1 by 3.5 mi (1.6 by 5.6 km), totalling fewer than 1,000 individuals (HHP 1990k1, 1990k3, 1990k5, 1990k6, 1990k9). This species is found along ridges and on cattle trails in dry to mesic grasslands, shrublands, and forests with scattered native and alien trees. It ranges in elevation from about 2,000 to 2,100 ft (600 to 650 m) (HHP 1990k5, 1990k6; Wagner *et al.* 1990). Associated plant species include 'a'ali'i, 'ohi'a, pukiawe, and uluhe (Gagne and Cuddihy 1990). The major threats to *Schiedea lydgatei* are fire and habitat degradation and competition with the alien plant species molasses grass. Because fire is such a pervasive threat in this species, dry, windswept habitat, a single fire potentially could destroy as many as four of the five populations.

Silene alexandri was described by Hillebrand (1888) based upon a specimen he discovered on Molokai; *S. alexandri* is its currently accepted name (Wagner *et al.* 1990).

Silene alexandri, a member of the pink family, is an erect, perennial herb, 1 to 2 ft (30 to 60 cm) tall, and woody at the base. The narrow, elliptic leaves are 1.2 to 2.5 in (30 to 65 mm) long by 0.2 to 0.6 in (6 to 14 mm) wide and hairless except for a fringe along the margins. Flowers are arranged in open clusters with stalks 0.4 to 0.7 in (10 to 19 mm) long. The 5-lobed, 10-veined, tubular calyx is 0.7 to 1 in (19 to 25 mm) long, and the 5 white, deeply-lobed, clawed petals extend about 0.2 in (4 to 6 mm) beyond the calyx. The capsule is about 0.6 in (14 to 16 mm) long, but seeds have never been seen. The hairless stems, flowering stalks, and sepals and the larger flowers with white petals separate this species from other members of the genus (Hillebrand 1888, Wagner *et al.* 1990, Williams 1896).

Historically, *Silene alexandri* was known from Makolelau and Kamalo on East Molokai, but now it occurs only at the former site on privately owned land (HHP 1990L1, 1990L2). The only known population, comprising fewer than 10 individuals, is found on a cattle trail in remnant dry forest and shrubland (HHP 1990L1, Wagner *et al.* 1990) at an elevation between 2,000 and 2,500 ft (610 and 760 m) (Wagner *et al.* 1990). Associated plant species include 'a'ali'i, 'ohi'a, pukiawe, and uluhe (Gagne and Cuddihy 1990). Feral goats continue to degrade the habitat of *Silene alexandri* and pose a serious threat to remaining populations. Predation of this species by goats and cattle may possibly occur. Fire also is an immediate threat. Because of the small number of individuals and their severely restricted distribution, extinction from stochastic events is a very real threat.

Silene lanceolata is based upon fertile specimens collected on Kauai during the United States Exploring Expedition in 1840, as well as vegetative material collected during the same expedition the following year on Maui. Gray (1854) described the species, naming it for its narrow leaves. Hillebrand (1888) recognized one variety, var. *angustifolia;* later Sherff (1946) described and named two additional varieties, vars. *hillebrandii* and *forbesii*. The current treatment does not recognize any subspecific taxa (Wagner *et al.* 1990).

Silene lanceolata, a member of the pink family, is an upright, perennial plant with stems 6 to 20 in (15 to 50 cm) long, which are woody at the base. The narrow leaves are 1 to 3 in (25 to 80mm) long, 0.08 to 0.4 in (2 to 11 mm) wide, and smooth except for a fringe of hairs near the base. Flowers are arranged in open clusters with stalks 0.3 to 0.9 in (8 to 23 mm) long. The 5-toothed, 10-veined calyx is about 0.3 in (7 to 9 mm) long, and the wide portion of the 5 white, deeply-lobed, clawed petals is about 0.2 in (6 mm) long. The capsule is about 0.3 in (8 to 9 mm) in length and opens at the top to release reddish-brown seeds about 0.04 in (1 mm) in diameter. This species is distinguished from *S. alexandri*, the only other member of the genus found on Molokai, by its smaller flowers and capsules and its stamens, which are shorter than the sepals (Gray 1854, Hillebrand 1888, Wagner *et al.* 1990, Williams 1896).

The historical range of *Silene lanceolata* includes four Hawaiian islands: Kauai, below Puu Kolekole on East Molokai, Maunalei on Lanai, and Mauna Kea on Hawaii Island (HHP 1990m1 to 1990m3, Wagner *et al.* 1990). *Silene lanceolata* is presently extant on the islands of Molokai and Hawaii. A single population of approximately 100 individuals was found in 1987 on Molokai, where it remains on private land near Puu Kolekole (HHP 1990m1; J. Lau *in litt.*, 1991). The Hawaii Island population at Puu Ahi was last seen in 1949. In 1991, two populations of this species were discovered on Federally owned land in Kipuka Kalawamauna and Kipuka Alala in the Pohakuloa Training Area, which is located in the saddle between Mauna Kea and Mauna Loa. The three island of Hawaii populations are distributed over a distance of roughly 9 mi (15 km) between about 5,200 and 6,000 ft (1,600 and 1,800 m) in elevation (HHP 1990m1; Robert Shaw, Colorado State University, pers. comm., 1991). It is not known whether the Puu Ahi population still exists after decades of ungulate, humancaused, and natural disturbances. The 2 populations at PTA number between 95 and 125 individuals (R. Shaw, pers. comm., 1991), giving a total of fewer than 230 known individuals for the species. The populations on the island of Hawaii grow in two dry habitat types: shrubland dominated by dense *Myoporum sandwicensis* (naio), *Sophora chrysophylla* (mamane), and pukiawe with 'a'ali'i, pilo, and *Pennisetum setaceum* (fountain grass); and on 'a'a lava in a former *Chamaesyce olowaluana* ('akoko) forest now converted to fountain grass grassland with 'a'ali'i, mamane, naio, and *Chenopodium oahuense* ('aheahea) (R. Shaw, pers. comm., 1991). On Molokai, this species grows on cliff faces and ledges of gullies in dry to mesic shrubland at an elevation of about 2,600 ft (800 m) (HHP 1990m1 to 1990m3, Wagner *et al.* 1990). Habitat destruction by feral ungulates (goats, pigs, and sheep), wildfires resulting from hunting activities and military maneuvers, and alien plant invasion (fountain grass) are immediate threats to *Silene lanceolata*. Military exercises and predation by goats and sheep pose probable threats.

Hillebrand discovered *Stenogyne bifida* on Molokai in 1870 and named it

in reference to the deeply two-lobed upper lip of its corolla (Hillebrand 1888). The name is accepted in the latest revision of the genus (Weller and Sakai 1990).

Stenogyne bifida, a nonaromatic member of the mint family, is a perennial herb, evidently climbing, with smooth or slightly hairy, four-angled stems. The opposite, membranous, toothed leaves are oval or elliptical in shape, measure 1.7 to 4 in (4.2 to 10 cm) long and 0.7 to 1.4 in (1.7 to 3.6 cm) wide, and are hairless except for the midribs. Flowers are usually arranged in groups of two to six in each of several whorls at the ends of the stems. The sepals are fused into a toothed calyx which is almost hairless, radially symmetrical, narrowly bell-shaped, and 0.3 to 0.5 in (8 to 12 mm) long. The petals are fused into a nearly straight, yellow tube 0.4 to 0.6 in (10 to 16 mm) long which flares into pale-brown lobes comprising an upper lip about 0.2 in (4 to 6 mm) long and a lower lip about 0.1 (2 to 4 mm) long. The fruits are fleshy, black nutlets about 0.1 in (2.5 to 3 mm) long. The long, narrow calyx teeth and the deep lobe in the upper lip of the yellow corolla separate this species from others of the genus (Hillebrand 1888, Sherff 1935b, Weller and Sakai 1990).

Historically, *Stenogyne bifida* was known from scattered populations from Waianui in central Molokai to Pukoo Ridge on East Molokai (HHP 1990n3 to 1990n9, Wagner *et al.* 1990). This species is now known from only 3 East Molokai populations totalling fewer than 10 individuals: On Manawai-Kahananui Ridge along a private/State land boundary, on Kolo Ridge, and on the eastern fork of Kawela Gulch in privately owned Pelekunu Preserve (HHP 1990n1, 1990n2; Steve Anderson, Haleakala National Park, pers. comm., 1990). These three populations are scattered over an area of 6.6 sq mi (17 sq km). *Stenogyne bifida* typically grows on steep ridges in 'ohi'a-dominated Montane Mesic to Wet Forests with native species such as hapu'u, manono, 'olapa, *Broussaisia arguta* (kanawao), and *Pouteria* ('ala'a) at elevations between 1,450 and 4,000 ft (450 and 1,200 m) (HHP 1990n1 to 1990n9, HPCC 1990c). Ungulates (axis deer, goats, and pigs) are pervasive threats to populations of *Stenogyne bifida* and may eat this species when available. One trailside population that represents a significant portion of the species potentially could be destroyed by over-collecting for scientific purposes or by vandals.

Sherff (1934c) described *Tetramolopium rockii*, naming it in honor of Joseph Rock, who first collected the plant in 1910, on Molokai. St. John (1974) described a new genus, *Luteidiscus*, for the species of *Tetramolopium* with yellow disk flowers. He transferred *T. rockii* to the new genus and also described a new species, *L. calcisabulorum*. The current treatment (Lowrey 1981, 1986, 1990) reduces St. John's two species to varieties of *Tetramolopium rockii*: the nominative variety and var. *calcisabulorum*.

Tetramolonium rockii, a member of the aster family, is a glandular, hairy, prostrate shrub which forms complexly branching mats 2 to 4 in (5 to 10 cm) tall and 3 to 16 in (8 to 40 cm) in diameter. Leaves of variety *calcisabulorum* are 0.8 to 1.2 in (2 to 3 cm) long and 0.2 to 0.3 in (5 to 7 mm) wide, have slightly inrolled edges, and are whitish due to the long silky hairs on their surfaces. Variety *rockii* has smaller, less hairy, flat, yellowish-green leaves, 0.6 to 0.8 in (1.5 to 2.1 cm) long and about 0.2 in (4 to 6 mm) wide. The leaves of both varieties are spatula-shaped with glands and smooth margins. Flower heads, arranged singly at the ends of flowering stalks 1.6 to 4.7 in (4 to 12 cm) long, have a hemispherical involucre (set of bracts beneath the florets) 0.2 to 0.3 in (4 to 8 mm) high and 0.4 to 0.7 in (10 to 18 mm) in diameter. Approximately 60 to 100 white ray florets, 0.1 to 0.2 in (3 to 4.5 mm) long and 0.02 to 0.04 in (0.5 to 1 mm) wide, surround 30 to 55 functionally male, yellow, funnel-shaped disk florets. Fruits are achenes, 0.08 to 0.1 in (2 to 2.5 mm) long and about 0.03 in (0.7 to 0.9 mm) wide when fertile, and are topped with white bristles 0.1 to 0.2 in (2.5 to 4 mm) long. This species differs from others of the genus by its growth habit, its hairy and glandular surfaces, its spatulate leaf shape, and its yellow disk florets (Degener and Degener 1965; Lowrey 1981, 1986, 1990; Sohmer and Gustafson 1987).

Of the two recognized varieties of *Tetramolopium rockii*, variety *rockii* was first discovered at Moomomi about 80 years ago and is still extant in that area. *Tetramolopium rockii* var. *rockii* remains in two areas: from Kapalauoa to Kahinaakalani on West Molokai (HHP 1990o2, 1990o3; HPCC 1990e; Lowrey 1990), and north of Kalawao on Kalaupapa Peninsula on East Molokai (Canfield 1990; HHP 1990o4; J. Lau, pers. comm., 1990). Variety *calcisabulorum* is only reported west of Moomomi, from west of Manalo Gulch to Kalani, intergrading with variety *rockii* where their ranges overlap (HHP 1990o1, 1990o2; HPCC 1990d). The only known population of *T. rockii* var. *calcisabulorum* and the scattered West Molokai population of *T. rockii* var. *rockii* extend over a distance of about 4.5 mi (7 km) along the northern coast, sometimes locally dominating the vegetation (HHP 1990o1, 1990o3). Twelve mi (19 km) to the east, the Kalawao population of variety *rockii* encompasses approximately 95 ac (35 ha) (HHP 1990o4). The species is estimated to number 174,000 individuals (HHP 1990o1 to 1990o4). *Tetramolopium rockii* is restricted to hardened calcareous sand dunes or ash-covered basalt in the coastal spray zone or Coastal Dry Shrublands and Grasslands between 30 and 650 ft (10 and 200 m) in elevation (Lowrey 1990). Native plant species associated with this species include *Fimbristylis cymosa*, *Heliotropium anomalum* (hinahina), *Lipochaeta integrifolia* (nehe), *Sida fallax* ('ilima), and *Sporobolus virginicus* ('aki'aki) (Canfield 1990; HHP 1990o1 to 1990o4). The major threats to *Tetramolopium rockii* are ungulate (axis deer and cattle) activity, competition with the alien plant *Prosopis pallida* (kiawe), human recreational impacts, and fire. Predation by deer and cattle are potential threats. Although the threat to this species is limited because of the large number of existing individuals, *T. rockii* is likely to become endangered in the foreseeable future if the threats are not curbed.

Previous Federal Action

Federal action on these plants began as a result of section 12 of the Act, which directed the Secretary of the Smithsonian Institution to prepare a report on plants considered to be endangered, threatened, or extinct in the United States. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. In that document, *Bidens wiebkei*, *Brighamia rockii*, *Canavalia molokaiensis*, *Hedyotis mannii* (as *H. thyrsoidea* var. *thyrsoidea*), *Hibiscus arnottianus* ssp. *immaculatus* (as *H. immaculatus*), *Melicope reflexa* (as *Pelea reflexa*), *Pritchardia munroi* (as *P. munroii*), *Silene alexandri*, and one of the varieties of *Silene lanceolata* accepted at that time were considered to be endangered. Three of the four varieties of *Hedyotis mannii* accepted in 1975 and three of the varieties of *Silene lanceolata* then accepted were considered to be threatened, and *Tetramolopium rockii* was considered to be extinct. 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 all of the above taxa considered to be endangered or thought to be extinct. The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** publication.

General comments received in response to the 1976 proposal are summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909). In 1978, amendments to the Act required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to proposals already over 2 years old. On December 10, 1979, the Service published a notice in the **Federal Register** (44 FR 70796) withdrawing the portion of the June 16, 1976, proposal that had not been made final, along with four other proposals that had expired.

The Service published updated notices of review for plants on December 15, 1980 (45 FR 82479), September 27, 1985 (50 FR 39525), and February 21, 1990 (55 FR 6183). In these notices, nine of the taxa that had been in the 1976 proposed rule were treated as category 1 candidates for Federal listing. Category 1 taxa are those for which the Service has on file substantial information on biological vulnerability and threats to support preparation of listing proposals. Other than *Hedyotis mannii*, all the aforementioned taxa that were either proposed as endangered or considered possibly extinct; in the June 16, 1976, proposed rule were considered category 1 candidates on all three of the notices of review. *Hedyotis mannii* (as *H. thyrsoidea*) was considered as a category 1* species on the 1980 and 1985 notices, but *H. thyrsoidea* is now regarded as synonymous with *H. mannii* (Wagner *et al.* 1990). *Hedyotis mannii* (as *H. monnii)* was considered a category 2 species on the 1980 and 1985 notices and was included as a category 1 candidate on the 1990 notice. Category 1* taxa are those which are possibly extinct; category 2 taxa are those for which there is some evidence of vulnerability, but for which there are not enough data to support listing proposals at the time. *Schiedea hydgatei* first appeared on the 1985 notice as a category 1 species and remained so on the 1990 notice. *Clermontia oblongifolia* ssp. *mauiensis*, *Cyanea mannii*, *Phyllostegia mannii*, and *Stenogyne bifida* first appeared on the 1990 notice as category 1 taxa. *Cyanea procera* first appeared on the 1990 notice as a category 1* taxon, but information regarding the current existence of individuals of this species became available in 1991.

Section 4(b)(3)(B) of the Act requires the Secretary to make findings on certain pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. On October 13, 1983, the Service found that the petitioned listing of these taxa 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, 1989, and 1990.

On September 20, 1991, the Service published in the **Federal Register** (56 FR 47718) a proposal to list 15 plant taxa from the island of Molokai as endangered, and 1 as threatened. This proposal was based primarily on information supplied by the Hawaii Heritage Program, the Hawaii Plant Conservation Center, and observations of botanists and naturalists. The Service now determines 15 taxa primarily from the island of Molokai to be endangered, and an additional taxon to be threatened, with the publication of this rule.

Summary of Comments and Recommendations

In the September 20, 1991, 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 decision on the proposal. The public comment period ended on November 19, 1991. Appropriate State agencies, county and city governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices inviting general public comment were published in the Maui News on October 1, 1991, and in the Hawaii Tribune-Herald on October 4, 1991. Two letters of comment, both from conservation organizations, were received. One letter supported the listing of these 16 taxa as threatened or endangered; the other provided additional information which has been incorporated into this final rule.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that 15 plant taxa from the island of Molokai should be classified as endangered species and 1 taxon from the island of Molokai should be classified as threatened. Section 4 of the Endangered Species Act (16 U.S.C. 1533) and regulations (50 CFR part 424) promulgated to implement the Act set forth the procedures for adding species to the Federal Lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). The threats facing these 16 taxa are summarized in Table 1.

TABLE 1.—SUMMARY OF THREATS

Species	Feral animal activity					Alien plants	Fire	Human impacts	Rodents	Limited numbers [1]
	Deer	Goats	Pigs	Sheep	Cattle					
Bidens weibkei	X	X				X	X	X		X
Brighamia rockii	X	X				P			P	
Canavalia molokaiensis		X	X			X				X
Clermontia oblongifolia ssp. *brevipes.*			X						P	X
Cyanea mannii			X						P	X
Cyanea procera		X	P						P	X
Hedyotis mannii			X			X				X
Hibiscus arnottianus ssp. *immaculatus.*		X								X

TABLE 1.—SUMMARY OF THREATS—Continued

Species	Feral animal activity					Alien plants	Fire	Human impacts	Rodents	Limited numbers [1]
	Deer	Goats	Pigs	Sheep	Cattle					
Melicope reflexa	X		X			X				
Phyllostegia mannii			X							X
Pritchardia munroi	X	X	P				X		X	X
Schiedea lydgatei						X	X			
Silene alexandri		X					X			X
Silene lanceolata		X	X	X		X	X	X		
Stenogyne bifida	X	X	X					X		X
Tetramolopium rockii	X				X	X	P	X		

X = Immediate and significant threat.
P = Potential threat.
[1] No more than 100 individuals.

These factors and their application to *Bidens wiebkei* Sherff (ko'oko'olau), *Brighamia rockii* St. John (pua 'ala), *Canavalia molokaiensis* Degener, I. Degener & J. Sauer ('awikiwiki), *Clermontia oblongifolia* Gaud. ssp. *brevipes* (F. Wimmer) Lammers ('oha wai), *Cyanea mannii* (Brigham) Hillebr. (haha), *Cynea procera* Hillebr. (haha), *Hedyotis mannii* Fosb. (pilo), *Hibiscus arnottianus* A. Gray ssp. *immaculatus* (M. Roe) D. Bates (koki'o ke'oke'o), *Melicope reflexa* (St. John) T. Hartley and B. Stone (alani), *Phyllostegia mannii* Sherff (NCN), *Pritchardia munroi* Rock (loulu), *Schiedea lydgatei* Hillebr. (NCN), *Silene alexandri* Hillebr. (NCN), *Silene lanceolata* A. Gray (NCN), *Stenogyne bifida* Hillebr. (NCN), and *Tetramolonium rockii* Sherff (NCN) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

Native vegetation on the islands of Molokai and Hawaii has undergone extreme alterations because of past and present land management practices including ranching activities, deliberate animal and alien plant introductions, and agricultural development (Cuddihy and Stone 1990, Wagner *et al.* 1985). Ongoing and threatened destruction and adverse modification of habitat by feral animals and competition with alien plants are the primary threats facing the 16 taxa included in this rule.

Fifteen of the 16 taxa are variously threatened by feral animals. Of the ungulates that have become established on Molokai during the past 150 years, the axis deer (*Cervus axis*) has probably had the greatest impact on the native vegetation. Eight axis deer, introduced to Molokai in 1868 (Culliney 1988, Tomich 1986), increased to thousands of animals by the 1960s (Graf and Nichols 1966). By the turn of the century, these deer had occupied much of the dry to mesic lowland areas and were also found in the wet forests of East Molokai (Graf and Nichols 1966, van Riper and van Riper 1982), where herds so damaged the vegetation that professional hunters were hired to control their numbers (Culliney 1988). The native vegetation has suffered irreparable damage from overgrazing by these animals. Deer degrade the habitat by trampling, consuming, and overgrazing vegetation, which removes ground cover, exposing the soil to erosional actions (J. Lau, pers. comm., 1990). Alien plant species are then able to exploit the newly disturbed areas.

A large portion of the axis deer population on Molokai has been actively managed for recreational hunting by the Division of Forestry and Wildlife since 1959. The maximum allowable limit is only one male deer per hunting trip; the remainder are managed to provide a sustainable yield (Hawaii Department of Land and Natural Resources (DLNR) 1988). Its future as a game species is assured because of its popularity among hunting organizations and its adaptability to the environment of Molokai (Tomich 1986). At present, five of the seven managed hunting areas on Molokai are within the Molokai Forest Reserve. Many areas lack maintained boundary fences that would prevent deer from entering more fragile habitats to the north (Cuddihy *et al.* 1982) and non-game areas to the east. Recently axis deer have begun to enter the windward valleys and northern coastline of East Molokai where they were not previously observed (J. Lau, pers. comm., 1990). Axis deer are threatening the coastal habitats of *Brighamia rockii* and *Tetramolopium rockii* and the montane habitats of *Melicope reflexa, Pritchardia munroi, and Stenogyne bifida* (Bruegmann 1990; HHP 1990h2, 1990o1; J. Lau, pers. comm., 1990; E. Misaki, pers. comm., 1992). The lowland habitat of *Bidens wiebkei* is also threatened by axis deer (CPC 1991).

Introduced to Molokai in the early 1800s, the goat (*Capra hircus*) population flourished despite losses to the goatskin trade that spanned most of that century (Cuddihy and Stone 1990). Currently feral goats, unlike axis deer, degrade Molokai's higher elevation dry forests (Stone 1985) and are now invading the wetter regions along the northern coast of East Molokai (J. Lau, pers. comm., 1990). The impact of feral goats on native vegetation is similar to that described for deer (Cuddihy *et al.* 1982, Scott *et al.* 1986). Although northeastern Molokai is considered one of the most remote and inaccessible places in the main Hawaiian islands, the vegetation there is predominantly exotic (Culliney 1988). The replacement of native vegetation is attributed to the large number of goats. Due to their agility, goats are able to reach vegetation not usually accessible to other animals (Culliney 1988). As a result, various native plants are confined to areas inaccessible to goats. For example, *Brighamia rockii* persists on steep ledges out of the reach of goats and is unlikely to reestablish in any place accessible to them (Culliney 1988, HHP 1990b3). The sole populations of *Silene alexandri* and *Silene lanceolata* at Makolelau; the *Bidens wiebkei* population at Makakupaia; populations of *Canavalia molokaiensis, Hibiscus arnottianus* ssp. *immaculatus*, and *Stenogyne bifida* along the northern shore of East Molokai; *Cyanea procera* at the head of Waikolu Valley; and the only known wild *Pritchardia munroi* palm are threatened by goats (Bruegmann 1990; CPC 1991; Garnett 1989; Gerum 1989; HHP 1990g5, 1990j1, 1990L1; J. Lau, pers. comm., 1990; J. Lau, *in litt.*, 1991). The Hawaii Island populations of *Silene lanceolata* located at Pohakuloa Training Area are also threatened by feral goats found throughout the region. Because goats are managed by the State as a game animal, hunting is encouraged. This activity increases the potential of vegetation being trampled by hunters and increases the threat of hunting-related fires.

Unlike axis deer and goats, pigs (*Sus scrofa*) are generally restricted to the wetter forested regions of Molokai, predominantly in the Molokai Forest Reserve where the majority of the plants included in this rule are located. Well known as a major destroyer of these forest habitats, feral pigs root extensively, trample native vegetation cover, and generally degrade native habitat (Cuddihy and Stone 1990, Stone 1985, van Riper and van Riper 1982). Not only are feral pigs major disseminators of alien plant seeds by carrying them internally or on their bodies, but they often carry the seeds into more pristine forests, further degrading the native ecosystem. In East Molokai's wet upland forests, pigs are destroying the habitat of most populations of *Canavalia molokaiensis, Cyanea mannii,* and *Melicope reflexa,* both populations of *Clermontia oblongifolia* ssp. *brevipes,* the only known population of *Phyllostegia mannii,* and the remaining individuals of *Hedyotis mannii* (CPC 1991; Dalton 1984; J. Lau, pers. comm., 1990). Pigs also threaten the Kawela gulch population of *Stenogyne bifida* on Molokai and locally degrade the habitat of *Silene lanceolata* on the island of Hawaii (Aplet *et al.* n.d., HPCC 1990c). The only known surviving plant of *Pritchardia munroi* in the wild was recently fenced to protect it from pigs and other ungulates (CPC 1991). Therefore, feral pigs are no longer a direct threat to this plant, although they continue to degrade the habitat outside the fenced enclosure, making it unlikely that seedlings will become established there. Eradication efforts in The Nature Conservancy preserves include public hunting; many other areas of East Molokai also have public hunting programs (E. Misaki, pers. comm., 1990). However, feral pigs are invasive animals and often inhabit gulches and areas not frequented by hunters or management personnel, hindering the control of those animals in remote sites.

Feral sheep (*Ovis aries*) have become firmly established on the island of Hawaii (Tomich 1986) since their introduction almost 200 years ago (Cuddihy and Stone 1990). Like feral goats, sheep roam the upper elevation dry forests of Mauna Kea (above 3,300 ft (1,000 m)), including Pohakuloa Training Area, causing damage similar to that of goats (Stone 1985). Sheep have decimated vast areas of native forest and shrubland on Mauna Kea and continue to do so as a managed game species. Sheep threaten the habitat of *Silene lanceolata* and at least two listed endangered plant species (Cuddihy and Stone 1990, Shaw *et al.* 1990, Stone 1985).

Although not a direct threat at present to the plant taxa in this final rule, cattle (*Bos taurus*) ranching on Molokai has played a significant role over most of the past 150 years in reducing areas of native vegetation to vast pastures of alien grasses (Cuddihy and Stone 1990, Pekelo 1973, Stone 1985). In 1960 approximately 61 percent of Molokai's land area was devoted to grazing, primarily the lower elevation dry to mesic forests, shrublands, and grasslands of West and central Molokai (Baker 1961). Cattle degraded the habitat by trampling and feeding on vegetation, eventually opening up the ground cover, exposing the soil, and increasing its vulnerability to erosion (Cuddihy and Stone 1990, Lindgren 1908, Pekelo 1973). Red erosional scars resulting from decades of cattle disturbance, exacerbated by other feral ungulate activities, are still evident on West Molokai and upper elevation ridges of East Molokai. Cattle also have facilitated the spread of alien grasses and other plants (Cuddihy and Stone 1990). Because of this alteration of vegetation, natural areas became limited to the upper elevation mesic to wet forests of East Molokai, where the State designated a single protected area: the Molokai Forest Reserve. Most of the taxa in this rule are restricted to this forest reserve, which occupies about 30 percent of Molokai's land area (Baker 1961). As the fences separating cattle ranches from the forest reserve began to deteriorate over time, cattle from low elevation pastures were free to enter the forest reserve, further degrading the native forest (Cuddihy and Stone 1990, Pekelo 1973, Pratt 1973).

In the early 1970s, in an effort to keep bovine tuberculosis from entering domestic stock, a total of 375 wild cattle were eradicated from the forest reserve (Pekelo 1973). Because this did not eliminate tuberculosis, domestic cattle were eradicated from the island between 1985 and 1986. After a mandatory 1-year hiatus, ranches were allowed to reintroduce non-breeding and later breeding animals, such that the cattle population on Molokai is now growing (Molokai Ranch, Ltd. 1988a; J. Lau, pers. comm., 1990). At present, cattle are limited to a large private ranch on West Molokai with over 1,800 animals and small private ranches on East Molokai (Molokai Ranch, Ltd. 1988a to 1988c; E. Misaki, pers. comm., 1990). Cattle are not known to have entered the Molokai Forest Reserve since their reintroduction to the island in 1987 (William Falconer, Maui Department of Agriculture, pers. comm., 1991). However, on West Molokai there have been reports of cattle in Moomomi Preserve (HPCC 1990e), where a protective fence was recently erected to protect *Tetramolopium rockii* and other unique native plants (E. Misaki, pers. comms., 1990, 1992). Since part of the *T. rockii* population lies outside the fence (E. Misaki, pers. comm., 1992), cattle continue to degrade habitat of *T. rockii.* The future of cattle and their impact on the native vegetation of Molokai, including the 16 taxa in this rule, is uncertain. However, as cattle ranching becomes a more important economic activity on the island, the impact of cattle will likely be increasingly deleterious.

Cattle ranching was the island's primary industry until the 1920s, when pineapple cultivation was introduced to boost the then failing economy (Bottenfield 1958). Most of the land used for this form of agriculture had already been altered through decades of extensive ranching activities. However, until the pineapple industry's decline in the 1970s, pineapple cultivation contributed significantly to the high degree of erosion (Cuddihy and Stone 1990, Wagner *et al.* 1985). More recently, economic growth has been based largely on tourism (Plasch 1985). Hotels are being proposed in conjunction with an anticipated increase in the tourist industry. Although development is limited at present to the primary tourist destination of Kaluakoi on Molokai's western end, it is inevitable that development will affect the native vegetation elsewhere on the island. For example, a water diversion plan currently under discussion proposes the extension of a tunnel eastward from Waikolu Stream, now being tapped, to other potential watershed sources such as Pelekunu Valley. Under current methods of tunnel development, construction at the surface level is likely to favor the spread of alien plant species (Alan Holt, TNCH, pers. comm., 1990).

Seven of the 16 taxa are threatened by competition with 1 or more alien plant species (see Table 1). Noxious alien plants such as *Schinus terebinthifolius* (Christmas berry) have invaded the dry to mesic lowland areas. Introduced to Hawaii before 1911, Christmas berry has had particularly detrimental impacts (Cuddihy and Stone 1990). Its spread is facilitated by the opening of the ground cover and canopy by feral ungulates. This fast-growing tree is considered one of the major alien plant problems affecting the native vegetation of Molokai because it is able to form dense thickets that displace other plants

(Cuddihy and Stone 1990; Smith 1985; J. Lau, pers. comm., 1990). It is spreading in Kalaupapa, Waikolu, and throughout Halawa (Kirch and Kelly 1975; Linney, in press; J. Lau, pers. comm., 1990), where it presently threatens the habitat of four of the five populations of *Bidens wiebkei* and may threaten populations of *Brighamia rockii* (HHP 1990b3).

With the introduction of cattle, goats, and deer and the development of organized ranching, the native forests in many parts of the State were converted to vast pastures of alien grasses. Of the alien grasses that have become established on Molokai, *Melinus minutiflora* (molasses grass) is probably the most disruptive to its native dry forests. First introduced as cattle fodder (Bottenfield 1958), then planted for erosion control (Cuddihy and Stone 1990), this alien species quickly spread to dry and mesic forests previously disturbed by ungulates. Molasses grass produces a dense mat capable of smothering plants (Smith 1985), essentially preventing seedling growth and native plant reproduction (Cuddihy and Stone 1990). As a fuel for fire, molasses grass intensifies its heat and carries fire into areas with woody plants (Cuddihy and Stone 1990, Smith 1985). It is able to spread prolifically after a fire and effectively compete with less fire-adapted native plant species, creating a dense stand of alien grass where forests once stood. Molasses grass is becoming a major problem in dry sites along the many leeward ridges of East Molokai. Also affected are the lower portions of Kamakou Preserve and outlying areas to the south (J. Lau, pers. comm., 1990). Here all five populations of *Schiedea lydgatei*, and populations of *Canavalia molokaiensis* and *Hedyotis mannii* are threatened by invading molasses grass (HHP 1990c4, 1990f1; J. Lau, pers. comm., 1990). The southern section of Halawa, containing a population of *Bidens wiebkei*, is also infested (HHP 1990a3). The other plant taxa covered by this rule which are found near molasses grass are not presently threatened, because they grow in gulches and wetter areas where the intact ground cover makes invasion by molasses grass difficult.

Prosopis pallida (kiawe), a common deciduous tree found in arid, low-elevation, disturbed sites on Molokai (Smith 1985, Wagner *et al.* 1990), has invaded areas adjacent to the hardened sand dunes of Moomomi Preserve where *Tetramolopium rockii* grows (HHP 1990o1; J. Lau, pers. comm., 1990). Kiawe shades the ground cover and its vast root system dries the substrate by utilizing all available water (Smith 1985). It thus competes with *Tetramolopium rockii* (E. Misaki, pers. comm., 1990) for light, space, and moisture.

Of the naturalized species in the melastome family, *Clidemia hirta* (Koster's curse) has become one of the most disruptive invaders of Hawaii's native ecosystems (Cuddihy and Stone 1990). First reported from the island of Oahu in 1941, Koster's curse quickly invaded the other Hawaiian islands and now occupies more than 23 sq mi (60 sq km) on East Molokai, primarily in Pelekunu and Wailau valleys (Cuddihy and Stone 1990). This noxious shrub forms a dense understory up to 6 ft (2 m) tall, shading other plants and hindering plant regeneration (Smith 1985). Koster's curse threatens to replace the Wailau-Mapulehu summit ridge population of *Melicope reflexa* (HHP 1990h2; J. Lau, pers. comm., 1991).

Pennisetum setaceum (fountain grass) is a fire-adapted bunch grass that has spread rapidly over bare lava flows and open areas on the island of Hawaii since its introduction in the early 1900s. Fountain grass is particularly detrimental to Hawaii's dry forests because it is able to invade areas once dominated by native plants, where it interferes with plant regeneration, carries fires into areas not usually prone to fires, and increases the likelihood of fires (Cuddihy and Stone 1990, Smith 1985). The *Chamaesyce olowaluana* ('akoko) forests on the island of Hawaii, apparently former habitat of *Silene lanceolata*, have burned repeatedly and are now largely replaced by fountain grass (R. Shaw, pers. comm., 1991). This alien plant is present in the habitat of one of the populations of *Silene lanceolata* on the island of Hawaii, where it is likely to become a more serious problem.

Fire is a major threat to the plant species found in dry to mesic habitats, especially in the lower portions of Kamakou Preserve and adjacent areas to the south, where populations of *Schiedea lydgatei*, *Silene alexandri*, and *Silene lanceolata* are located (Cuddihy *et al.* 1982; J. Lau, pers. comm., 1990; E. Misaki, pers. comm., 1991). Populations of *Bidens wiebkei* at Halawa and *Tetramolopium rockii* at Moomomi are also threatened by fire (CPC 1991; HHP 1990o1). For reasons previously discussed, the presence of molasses grass greatly enhances the potential and destructiveness of fires. For example, in 1988 a human-caused fire consumed roughly 15 sq mi (38 sq km) of shrubland and forest from the southern coastline of East Molokai to the southwest corner of Kamakou Preserve, about 3.5 mi (5.5 km) inland (E. Misaki, pers. comm., 1990), and may possibly have destroyed four of the five populations of *Schiedea lydgatei*. Molasses grass was the main carrier of that fire (E. Misaki, pers. comm., 1991). Although fires are not frequent at Moomomi, a single fire could burn extensively through dry shrub and grassland and destroy portions of the *Tetramolopium rockii* populations that grow there (E. Misaki, pers. comm., 1990). The dry to mesic habitat of *Pritchardia munroi* is also threatened by fire (CPC 1991, HHP 1990j1).

Natural fires and fires accidentally set by hunters or military ordnance or personnel within PTA on the island of Hawaii threaten native vegetation on the leeward side of Mauna Kea (Herbst and Fay 1979), including the habitat of three populations of *Silene lanceolata*. Although the habitat of Hawaii Island populations of *S. lanceolata* at Kipuka Alala and Kipuka Kalawamauna has apparently been burned repeatedly, those populations are still present (R. Shaw, pers. comm., 1991). This suggests the possibility that this species may be tolerant to fire. However, fire-adapted grasses already at these sites can exploit newly burned areas more rapidly than woody species (Cuddihy and Stone 1990) (presumably including *S. lanceolata*), resulting in the conversion of native shrubland to land dominated by alien grasses. Fire is therefore at least an indirect and serious threat to this species. In order to protect the Kipuka Kalawamauna population from fires, the U.S. Army has installed firebreaks and now redirects ordnance firing away from that kipuka. The Army is also developing plans to protect the newly discovered Kipuka Alala population.

Habitat disturbance caused by human activities threatens four of the taxa. Military exercises at PTA on the island of Hawaii may have threatened *Silene lanceolata* in the past. Planned military maneuvers are now being reevaluated in light of the recent discovery of the Kipuka Alala and Kipuka Kalawamauna populations of that species. Recreational activities such as fishing and camping have drawn people to Moomomi Preserve and the adjacent coastline. The population of *Tetramolopium rockii* on State-owned Hawaiian Home Lands east of Moomomi Preserve is subject to disturbance by vehicles passing along two jeep roads that run through that population (HPCC 1990e; E. Misaki, pers. comm., 1990), which represents almost 25 percent of the individuals of that species. Although the human impact on the spray zone population of *T. rockii* on Kalaupapa Peninsula is now minimal,

greater impacts may result from the expected increase in visitor use after the residents of Kalaupapa's Hansen's disease settlement live out their lives (Canfield, in press; Greene 1985; United States, National Park Service (NPS) 1986). A population of *Bidens wiebkei* at Makakupaia, representing approximately half the total individuals of that species, grows along a jeep road. Off-road activity would damage a significant portion of that population. One of the three populations of *Stenogyne bifida* is located near a hiking trail at Kawela and has the potential of being trampled or collected (S. Anderson, pers. comm., 1990).

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Overutilization is not known to be a factor, but unrestricted collecting for scientific or horticultural purposes or excessive visits by individuals interested in seeing rare plants could result from increased publicity and would seriously impact the 11 taxa whose low numbers make them especially vulnerable to disturbances. Such disturbance could promote erosion and greater ingression of alien plant species.

C. Disease or Predation

No evidence of disease has been reported for the 16 taxa. Rats (*Rattus* spp.) are known to eat the fruits of *Pritchardia munroi* (CPC 1991). Although the incidence of rats in the vicinity of the last remaining wild plant appears to be low, the fence that was erected to protect that plant from foraging animals does not prevent rats from continuing to feed on the fruit (Garnett 1989, HHP 1990j1). A more important threat is that of foraging by goats and other ungulates in the area, which has resulted in there being no successful regeneration of the palm (CPC 1991, Gerum 1989). There is no direct evidence that rats feed on *Brighamia rockii, Clermontia oblongifolia* ssp. *brevipes, Cyanea mannii*, or *Cyanea procera*. However, such evidence does exist for related *Clermontia* and *Cyanea* species in similar habitat on other islands (J. Lau, pers. comm., 1990). Because rats are found in remote areas on Molokai, it is likely that predation occurs on these four taxa as well (CPC 1991; HPCC 1990a; J. Lau, pers. comm., 1990).

A goat enclosure experiment on the island of Hawaii demonstrated that *Canavalia hawaiiensis*, a relative of *Canavalia molokaiensis*, is consumed by goats (St. John 1972). It is possible that goats also eat *C. molokaiensis*. At Moomomi, axis deer graze primarily on introduced plants inland of the dunes (Bruegmann 1986), but they are also likely to consume *Tetramolopium rockii* where it is the dominant ground cover. While there is no direct evidence of predation by ungulates on any of the 16 taxa, they are not known to be unpalatable to goats, deer, or cattle. Predation is therefore a probable threat at sites where those animals have been reported, potentially affecting 11 of the taxa: *Bidens wiebkei, Brighamia rockii, Canavalia molokaiensis, Cyanea procera, Hibiscus arnottianus* ssp. *immaculatus, Melicope reflexa, Pritchardia munroi, Silene alexandri, Silene lanceolata, Stenogyne bifida*, and *Tetramolopium rockii*.

D. The Inadequacy of Existing Regulatory Mechanisms

All 16 taxa have populations located on privately owned lawn. Nine taxa are found exclusively on private land. Of the remaining taxa, six also occur on State land (including one species located on the boundary between State and private land) and one occurs on Federal land. There are no State laws or existing regulatory mechanisms at the present time to protect or prevent further decline of these plants on private land. However, Federal listing would automatically invoke listing under Hawaii State law, which prohibits taking and encourages conservation by State Government agencies. State regulations prohibit the removal, destruction, or damage of plants found on State lands. However, the regulations are difficult to enforce because of limited personnel.

Hawaii's Endangered Species Act (HRS, Sect. 195D–4(a)) states, "Any species of aquatic life, wildlife, or land plant that has been determined to be an endangered species pursuant to the Endangered Species Act [of 1973] shall be deemed to be an endangered species under the provisions of this chapter and any indigenous species of aquatic life, wildlife, or land plant that has been determined to be a threatened species pursuant to the Endangered Species Act shall be deemed to be a threatened 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 these 16 plant taxa would therefore reinforce and supplement the protection available under State law. The Act would also offer additional protection to these 16 taxa because if they were to be listed as endangered or threatened, it would be a violation of the Act for any person to remove, cut, dig up, damage, or destroy any such plant in an area not under Federal jurisdiction in knowing violation of State law or regulation or in the course of any violation of a State criminal trespass law.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

The small number of populations and of individual plants of many of these taxa increases the potential for extinction from stochastic events. The limited gene pool may depress reproductive vigor, or a single human-caused or natural environmental disturbance could destroy a significant percentage of the individuals or the only known extant population. For example, 6 of the taxa are known from a single population: *Clermontia oblongifolia* ssp. *brevipes* and *Pritchardia munroi* (the latter reduced to a single remaining plant); *Cyanea procera* and *Phyllostegia mannii* (each numbering only 4 plants); *Hedyotis mannii* (11 plants); and *Silene alexandri* (fewer than 10 plants). All of the 16 taxa are known from 7 or fewer populations; 11 of them from fewer than 5 populations. Eleven of the taxa are estimated to number no more than 100 known individuals (see Table 1). Approximately 22 plants of *Pritchardia munroi* are in cultivation in various arboreta and institutions throughout the world (Gerum 1989). However, little is known about the genetics of this species and it is unclear whether hybridization with other species occurs, resulting in the questionable species integrity of the cultivated plants. It is not clear whether selfing or outcrossing (outbreeding) occurs or whether the second generation seeds are viable (Derral Herbst, U.S. Fish and Wildlife Service, pers. comm., 1990).

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these 16 taxa in determining to issue this final rule. Based on this evaluation, the preferred action is to list these 15 taxa: *Bidens wiebkei, Brighamia rockii, Canavalia molokaiensis, Clermontia oblongifolia* ssp. *brevipes, Cyanea mannii, Cynea procera, Hedyotis mannii, Hibiscus arnottianus* ssp. *immaculatus, Melicope reflexa, Phyllostegia mannii, Pritchardia munroi, Schiedea lydgatei, Silene alexandri, Silene lanceolata*, and *Stenogyne bifida*, as endangered and the

species *Tetramolopium rockii* as threatened. All of the taxa determined to be endangered are known from 7 or fewer populations, and 11 taxa are estimated to number fewer than 100 individuals. The 15 taxa are threatened by 1 of more of the following: Habitat degradation and/or predation by deer, feral goats, pigs, sheep, and cattle; competition from alien plants; fire; recreational activities; and military training exercises. Small population size makes these taxa particularly vulnerable to extinction from stochastic events. Because these 15 taxa 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.

Although all populations of *Tetramolopium rockii* are threatened to some degree by competition with alien plants, habitat destruction and predation by feral animals, fire, and/or human activities, the relatively large number of existing individuals of *T. rockii* reduces the likelihood that this species will become extinct in the near future. Because the threats facing *T. rockii* are limited at present, this species is not now in immediate danger of extinction throughout all or a significant portion of its range. However, *T. rockii* is likely to become endangered in the foreseeable future if the threats are not curbed. As a result, *Tetramolopium rockii* fits the definition of a threatened species as defined in the Act.

Critical habitat is not being designated for the 16 taxa included in this rule, 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 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 taxa. Such a determination would result in no known benefit to the taxa. Eleven of the taxa have extremely low total populations and face anthropogenic threats (See Factor B in "Summary of Factors Affecting the Species"). The publication of precise maps and descriptions of critical habitat in the **Federal Register** and local newspapers as required in a designation of critical habitat would increase the degree of threat to these plants from take or vandalism and, therefore, could contribute to their decline and increase enforcement problems. The listing of these taxa as either endangered or threatened publicizes the rarity of the plants and, thus, can make these plants attractive to researchers, curiosity seekers, or collectors of rare plants. All involved parties and the major landowners have been notified of the general location and importance of protecting the habitat of these taxa. Protection of the habitat of the taxa will be addressed through the recovery process and through the section 7 consultation process.

There are two known Federal activities within the currently known habitats of these plants. Three populations of *Silene lanceolata* are known from the Pohakuloa Training Area on the Island of Hawaii: One population, which has not been seen for over 40 years, was located in the northern part of PTA; another population is in the Kipuka Kalawamauna Endangered Plants Habitat, an area of PTA cooperatively designated by the U.S. Army, the U.S. Fish and Wildlife Service, the Hawaii Department of Fish and Wildlife, and the Hawaii Department of Land and Natural Resources; and the third population is in Kipuka Alala. Existing firebreaks and redirection of ordnance firing away from Kipuka Kalawamauna will help protect that population, and the Army is now developing plans to protect the newly discovered Kipuka Alala population. Three of the seven populations of *Canavalia molokaiensis* and one of the four populations of *Tetramolopium rockii* are found in Kalaupapa National Historical Park. Although the State of Hawaii owns the land where these populations are found, the National Park Service leases and manages the area. Federal laws protect all plants in the park from damage or removal. The involved Federal agencies are aware of the presence and location of these species, and any Federal activities that may affect these plants will be addressed through the section 7 consultation process. Therefore, the Service finds that designation of critical habitat for these taxa is not prudent at this time, because such designation would increase the degree of threat from vandalism, collecting, or other human activities and because it is unlikely to aid in the conservation of these taxa.

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 provides for possible land acquisition and cooperation with the State and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(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 such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Some populations of two species, *Canavalia molokaiensis* and *Tetramolopium rockii*, are located in Kalaupapa National Historical Park. Laws relating to national parks prohibit damage or removal of any plants growing in the parks. Most of the known individuals of *Silene lanceolata* are located within Pohakuloa Training Area on the Island of Hawaii. Firebreaks and redirection of firing exercises away from the listed plant species at Kipuka Kalawamauna will help protect the population of *Silene lanceolata* at that kipuka. Military activities planned near the Kipuka Alala population are now being reevaluated in the light of that population's discovery. There are no other known Federal activities that occur within the present known habitat of these 16 plant taxa.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 for endangered species and 17.71 and 17.72 for threatened species set forth a series of general prohibitions and exceptions that apply to all endangered plants and to threatened plant species not covered by a special rule. With respect to the 16 plant taxa from the island of Molokai, the prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61 and 17.71, apply. These prohibitions, in part, make it illegal with respect to any endangered plant, or any threatened plant subject thereto, for any person subject to the jurisdiction of the United States to import or export; transport in interstate or foreign commerce in the course of a

commercial activity; sell or offer for sale these species in interstate or foreign commerce; or to remove and reduce to possession any such species from areas under Federal jurisdiction; maliciously damage or destroy any such species on any area under Federal jurisdiction; or 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. Seeds from cultivated specimens of threatened plant species are exempt from these prohibitions provided that a statement of "cultivated origin" appears on their containers. Certain exceptions apply to agents of the Service and State conservation agencies.

The Act and 50 CFR 17.62, 17.63, and 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered and threatened plant species under certain circumstances. It is anticipated that few trade permits would ever be sought or issued because the species are not common in cultivation nor in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203–3507 (703/358–2104, FAX 703/358–2281).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment or Environmental Impact Statement, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited herein is available upon request from the Pacific Islands Office (see **"ADDRESSES"** section).

Author

The authors of this final rule are Derral R. Herbst, Joan E. Canfield, Joan M. Yoshioka, Z.E. Ellshoff, 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).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulations Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

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

Authority: 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 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					
Arecaceae—Palm family:						
• • • •	•	•	•	•		
Pritchardia munroi	loulu	U.S.A. (HI)	E		NA	NA
• • • •	•	•	•	•		
Asteraceae—Aster family:						
Bidens wiebkei	ko'oko'olau	U.S.A. (HI)	E		NA	NA
• • • •	•	•	•	•		
Tetramolopium rockii	None	U.S.A. (HI)	T		NA	NA
• • • •	•	•	•	•		
Campanulaceae—Bellflower family:						
• • • •	•	•	•	•		
Brighamia rockii	pua 'ala	U.S.A. (HI)	E		NA	NA
• • • •	•	•	•	•		
Clermontia oblongifolia ssp. *brevipes*	'oha wai	U.S.A. (HI)	E		NA	NA
• • • •	•	•	•	•		
Cyanea mannii	haha	U.S.A. (HI)	E		NA	NA
• • • •	•	•	•	•		
Cyanea procera	haha	U.S.A. (HI)	E		NA	NA
• • • •	•	•	•	•		
Caryophyllaceae—Pink family:						
• • • •	•	•	•	•		
Schiedea lydgatei	None	U.S.A. (HI)	E		NA	NA
• • • •	•	•	•	•		
Silene alexandri	None	U.S.A. (HI)	E		NA	NA
• • • •	•	•	•	•		
Silene lanceolata	None	U.S.A. (HI)	E		NA	NA
• • • •	•	•	•	•		
Fabaceae—Pea family:						
• • • •	•	•	•	•		
Canavalia molokaiensis	'awikiwiki	U.S.A. (HI)	E		NA	NA
• • • •	•	•	•	•		
Lamiaceae—Mint family:						
• • • •	•	•	•	•		
Phyllostegia mannii	None	U.S.A. (HI)	E		NA	NA
• • • •	•	•	•	•		
Stenogyne bifida	None	U.S.A. (HI)	E		NA	NA

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Malvaceae—Mallow family:						
Hibiscus arnottianus ssp. *immaculatus*	koki'o ke'oke'o	U.S.A. (HI)	E		NA	NA
Rubiaceae—Coffee family:						
Hedyotis mannii	pilo	U.S.A. (HI)	E		NA	NA
Rutaceae—Citrus family:						
Melicope reflexa	alani	U.S.A. (HI)	E		NA	NA

Dated: September 18, 1992.

Bruce Blanchard,

Director, Fish and Wildlife Service.

[FR Doc. 92-23932 Filed 10-7-92; 8:45 am]

BILLING CODE 4310-55-M

50 CFR PART 17

RIN 1018-AB73

Endangered and Threatened Wildlife and Plants; Echinacea laevigata (Smooth Coneflower) Determined To Be Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines the plant *Echinacea laevigata* (smooth coneflower), a perennial herb limited to 21 populations in Virginia, North Carolina, South Carolina, and Georgia, to be an endangered species under the authority of the Endangered Species Act of 1973, as amended (Act). *Echinacea laevigata* is endangered by collecting, encroachment of woody vegetation, residential and industrial development, highway construction and improvement, and certain types of roadside and power line right-of-way maintenance. This action implements Federal protection provided by the Act for *Echinacea laevigata*.

EFFECTIVE DATE: November 9, 1992.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, 330 Ridgefield Court, Asheville, North Carolina 28806.

FOR FURTHER INFORMATION CONTACT: Ms. Nora Murdock at the above address (704/665-1195, Ext. 231).

SUPPLEMENTARY INFORMATION:

Background

Echinacea laevigata is a rhizomatous perennial herb described by Boynton and Beadle in Small (1903) from material collected in South Carolina in 1888. This coneflower grows up to 1.5 meters tall from a vertical root stock; stems are smooth, with few leaves. The largest leaves are the basal leaves, which reach 20 cm in length and 7.5 cm in width, have long stems, and are elliptical to broadly lanceolate, tapering to the base, and smooth to slightly rough. The mid-stem leaves have shorter stems or no stems and are smaller in size than the basal leaves. The rays of the flowers (petal-like structures) are light pink to purplish, usually drooping, and 5 to 8 cm long. Flower heads are usually solitary. Flowering occurs from May through July. The fruit is a gray-brown, oblong-prismatic achene, usually four-angled, and 4 to 4.5 mm long; seeds are .5 cm long (Kral 1983, Radford *et al.* 1964, McGregor 1968, Cronquist 1980, Gaddy 1991, and Wofford 1989). The smooth coneflower can be distinguished from its most similar relative, the purple coneflower (*E. purpurea*), by its leaves, which in the smooth coneflower are never cordate (heart-shaped) like those of the purple coneflower. In addition, the awn of the pale in the smooth coneflower is incurved, while that of *E. purpurea* is straight (Kral 1983, Gaddy 1991, and Wofford 1989).

The reported historical range of *Echinacea laevigata* included Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, Georgia, Alabama, and Arkansas. The species is now known to survive only in Virginia, North Carolina, South Carolina, and Georgia. Five populations survive in Virginia, six in North Carolina, seven in South Carolina, and three in Georgia. Three additional populations in South Carolina (two in Aiken County and one in Allendale County) are believed to have been introduced. The habitat of smooth coneflower is open woods, cedar barrens, roadsides, clearcuts, dry limestone bluffs, and power line rights-of-way, usually on magnesium- and calcium-rich soils associated with limestone (in Virginia), gabbro (in North Carolina and Virginia), diabase (in North Carolina and South Carolina), and marble (in South Carolina and Georgia). Optimal sites are characterized by abundant sunlight and little competition in the herbaceous layer (Gaddy 1991). Natural fires, as well as large herbivores, are part of the history of the vegetation in this species' range; many of the associated herbs are also cormophytic, sun-loving species, which depend on periodic disturbances to reduce the shade and competition of woody plants (Kral 1983 and Gaddy 1991)

A total of 59 populations of *Echinacea laevigata* have been reported historically from 24 counties in 8 States. The reports from Alabama and Arkansas are now believed to have been misidentifications (Gaddy 1991). Of the 21 remaining populations (located in Pulaski, Montgomery, Campbell, and Franklin Counties, Virginia; Durham and Granville Counties, North Carolina; Oconee and Anderson Counties, South Carolina; and Stephens County, Georgia), 7 occur on land managed by the U.S. Forest Service, 2 are on U.S. Army Corps of Engineers lands, 1 is on North Carolina Department of Agriculture land, 1 site is owned by The Nature Conservancy, 1 site is owned by the South Carolina Heritage Trust Program, 1 site is within a right-of-way maintained by the South Carolina Department of Highways and Public Transportation, 1 is on land managed by Clemson University, and the remaining 7 are on privately owned lands. Several of these populations are in or near transmission line corridors of various utility companies or are near highway rights-of-way. Extirpated populations are believed to have succumbed due to the absence of natural disturbance (fire and/or grazing), highway construction and improvement, gas line installation, and residential and industrial development. The continued existence of *Echinacea laevigata* is threatened by these activities, as well as by collecting,

herbicide use, and possibly by encroachment of exotic species.

Federal government actions on this species began with Section 12 of the Act (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 number 94–51, was presented to Congress on January 9, 1975. The Service published a notice in the July 1, 1975, **Federal Register** (40 FR 27832) 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 of its intention thereby to review the status of the plant taxa named within.

Section 4(b)(3)(B) of the Act, as amended in 1982, 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. This was the case for *Echinacea laevigata* because the Service had accepted the 1975 Smithsonian report as a petition. In each October from 1983 through 1990, the Service found that the petitioned listing of this species was warranted but precluded by other listing actions of a higher priority, and that additional data on vulnerability and threats were still being gathered.

On December 15, 1980, the Service published a revised notice of review for native plants in the **Federal Register** (45 FR 82480); *Echinacea laevigata* was included in that notice as a category 2 species. Category 2 species are those species for which listing as endangered or threatened may be warranted but for which substantial data on biological vulnerability and threats are not currently known or on file to support proposed rules.

Subsequent revisions of the 1980 notice have maintained *Echinacea laevigata* in category 2. However, recently completed status survey work provided sufficient data to support proposing the species as endangered, and indicated the species to have a listing priority of 2 (see **Federal Register** of September 21, 1983 (48 FR 43098) for discussion of priority guidelines). A proposal was published on December 9, 1991 (56 FR 64229) to list *Echinacea laevigata* as endangered, and constituted the final 12-month finding for this species under Section 4(b)(3)(B) of the Act.

Summary of Comments and Recommendations

In the December 9, 1991, 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 Durham Herald (North Carolina) on December 29, 1991, and the Roanoke Times and World News (Virginia) on December 27, 1991.

Twenty-one comment letters were received. Nineteen of these expressed support for the proposal, and two presented additional information without stating a position.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Echinacea laevigata* 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 endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Echinacea laevigata* (Boynton and Beadle) Blake (smooth coneflower) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range.

Echinacea laevigata has been and continues to be endangered by destruction or adverse alteration of its habitat. Since discovery of the species, 64 percent of the known populations have been extirpated, partly as a result of conversion of habitat for silvicultural and agricultural purposes and for industrial and residential development. Fire suppression appears to be a problem for this species and will be discussed in detail under Factor E below. Of the 38 populations that have been extirpated, one is known to have been eliminated by highway construction, another by construction of a gas line, and a third by conversion of the site to pine plantation. Causes for the extirpation of the others are unknown. Many of the remaining populations are on the edges of highways or utility rights-of-way. The largest population remaining is in Granville County, North Carolina. This population, which contains one-third of the total smooth coneflower plants in existence, occupies a site that has recently been proposed for construction of a regional hazardous waste incinerator. Of the 21 extant populations, 13 are currently declining in numbers of plants, only 7 are considered stable, and 1 is increasing. Nineteen of the populations are currently threatened by habitat alterations (Gaddy 1991).

Half of the remaining populations survive along roadsides. Three populations remain on utility line rights-of-way, another is along an abandoned railroad right-of-way, and a fifth is on the edge of a motorbike trail in a wooded area. Most of the populations are small, with 11 containing less than 100 plants each. Four of these contain less than 10 plants each. Such small populations are inherently vulnerable to extirpation as a result of highway and right-of-way improvement, particularly if herbicides are use.

Highly restricted distribution and the scarcity of seed sources, as well as appropriate habitat, increase the severity of the threats faced by *Echinacea laevigata*. As stated in the "Background" section above, this species requires some form of disturbance to maintain its open habitat and can withstand mowing and timber-harvesting operations, if properly done. It cannot withstand bulldozing or direct application of broadleaf herbicides. In addition, the small populations that survive on road edges could be easily destroyed by highway improvement projects or by right-of-way maintenance activities, if these are not done in a manner consistent with protecting the species.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Echinacea laevigata, although offered for sale by a few native plant nurseries, is not currently a significant component of the commercial trade in native plants. However, many of the more common native coneflowers are in demand for horticultural use and are a significant part of the commercial trade. Publicity could generate an increased demand for this attractive species, which might exceed the currently available sources of cultivated material. Because of its small and easily accessible populations, it is vulnerable to taking and vandalism that could result from increased specific notoriety.

Overshadowing the potential threat of taking for horticultural purposes is the threat of commercial collection for the

pharmaceutical trade. For over a century, Midwestern species in this genus have been harvested and sold in European and American markets under the trade name "Kansas snake root" (McGregor 1968). In Germany alone, over 280 products made from various species of this American genus are registered for medicinal use (Bauer and Wagner 1990). As stated by Steven Foster (Consultant, Eureka Springs, Arkansas, personal communication, 1990):

> The potential danger of inadvertent harvest of plants for commercial markets may be the greatest hidden danger to *Echinacea laevigata* * * * we have been able to document that three endemic species have also been harvested without proper attention to species identity in the Midwest. These include the Ozark endemics, *E. paradoxa* and *E. simulata*, as well as *E. atrorubens*.

Documented harvests have reached as high as 200,000 pounds collected from a single Kansas county in 1 year. Given the fact that at least 8 to 10 dried roots are required to make up 1 pound, this single harvest represented the collection of approximately two million roots. Dr. Ronald McGregor, director emeritus of the herbarium at the University of Kansas and the leading authority on the genus *Echinacea* (in Foster 1991), noted drastic declines in Kansas populations of *Echinacea pallida* as a result of commercial harvests in the 5 years prior to 1987. Although most of the commercial supply of *Echinacea purpurea* now comes from cultivated sources, the demand for the roots far outstrips the commercial supply and is resulting in increasing pressure on wild populations of nearly every species in the genus.

In 1987, 7,000 individuals of the Ozark endemic, *Echinacea paradoxa*, were stolen from a Missouri State park (Wallace 1987). Wallace further stated, "Diggers do not discriminate between species, collecting all *Echinaceas*." Foster (1991) further states:

> Unfortunately, a number of the endemic and more unusual *Echinacea* species are entering commercial lots, dug by unwitting harvesters. In the Ozarks, this author has observed *Echinacea simulata*, harvested by the truck load. Roadside populations have decreased dramatically in South Central Missouri. The plant is much less common in northern Arkansas. Commercial harvest of this species from the wild cannot be sustained. If harvested at current levels over he next 10 years, its fate will be extinction.

Although such devastation of *Echinacea lavigata* populations for the commercial pharmaceutical trade has not yet been documented, almost two-thirds of the originally known populations of this species are gone. Those remaining are small, easily accessible, and highly vulnerable.

C. Disease or Predation

Echinacea angustifolia is known to be a host plant for certain species of leaf beetle (family *Chrysomelidae*) (Wilcox 1979). Beetles in this family have been observed on *Echinacea laevigata* in North Carolina, but it is unknown what effect they have on the plants. At this time there is no known threat to this species from disease.

D. The Inadequacy of Existing Regulatory Mechanisms

Echinacea laevigata is listed in North Carolina as endangered (Sutter 1990), in South Carolina as nationally threatened (Rayner *et al.* 1984), in Georgia as threatened (McCollum and Ettman 1987), and in Alabama as endangered (Freeman *et al.* 1979). The species is not listed in Virginia.

In North Carolina, *Echinacea laevigata* is afforded legal protection by North Carolina general statutes, § 106–202.122, 106–202.19 (Cum. Suppl. 1985). This legislation provides for protection from intrastate trade (without a permit), provides for monitoring and management of State-listed species, and prohibits taking of plants without the written permission of landowners. In Georgia the species is afforded legal protection under the Wildflower Preservation Act of 1973, Code of Georgia Ann., Title 43, Section 43–1801 to 43–1806. Georgia legislation prohibits taking of listed plants from public lands (without a permit) and regulates the sale and transport of plants within the State. Although South Carolina and Alabama recognize this species as nationally threatened and endangered, respectively, neither State offers legal protection for plants.

State prohibitions against taking are difficult to enforce and do not cover adverse alterations of habitats, such as exclusion of fire. The Endangered Species Act will provide additional protection and encouragement of active management for *Echinacea laevigata*.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

As mentioned in "Background" section of this proposed rule, many of the remaining populations are small in numbers of individual stems and in area covered by the plants. Therefore, there may be low genetic variability within populations, making it more important to maintain as much habitat and as many of the remaining colonies as possible. Much remains unknown about the demographics and reproductive requirements of this species in the wild, although several of the other species in the genus are readily cultivated and grown from seed. A few commercial nurseries specializing in native plants are currently propagating this species and are offering cultivated specimens for sale.

Fire or some other suitable form of disturbance, such as well-timed mowing or careful clearing, is essential to maintaining the glade remnants occupied by *Echinacea laevigaga*. Without such periodic disturbance, this type of habitat is gradually overtaken and eliminated by shrubs and trees of the adjacent woodlands. As the woody species increase in height and density, they overtop *Echinacea laevigata*, which, like most other coneflowers, is intolerant of dense shade. In addition, the species seems to require bare soil for germination of seeds. The current distribution of the species is ample evidence of its dependence on disturbance. Of the 21 remaining populations, 15 are on roadsides, in utility or railroad rights-of-way, or adjacent to trails.

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 *Echinacea laevigata* as endangered. With over two-thirds of the species' populations already having been eliminated and only 21 remaining in existence, and based upon its dependence on some form of active management, it definitely warrants protection under the Act. Endangered status appropriate because of the imminent serious threats facing all but one of the remaining populations. The largest population remaining, which contains almost a third of the total surviving plants, occupies the site of a proposed regional hazardous waste incinerator.

Critical habitat is not being designated for the reasons discussed below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate 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 *Echinacea laevigata*. As discussed in Factor B in the "Summary of Factors Affecting the Species," *Echinacea laevigata* is threatened by taking, an activity 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. Half of the populations are located on Federal land, while the rest are on State or private land. Two of the four States with known populations have no restrictions on taking. The other two have limited restrictions—Georgia prohibits taking on public lands without a permit, and North Carolina prohibits taking without permission from the landowner. However, take provisions are difficult to enforce, regardless of land ownership, and publication of critical habitat descriptions and maps in the **Federal Register** and local newspapers would make *Echinacea laevigata* more vulnerable and would increase enforcement problems. All involved parties and principal landowners have been notified of the location and importance of protecting this species' habitat. Protection of this species' habitat will be directed through the recovery process and through the Section 7 consultation process. Therefore, it would not now be prudent to determine critical habitat for *Echinacea laevigata*.

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.

Federal activities that could impact *Echinacea laevigata* and its habitat in the future include, but are not limited to, the following: power line construction, maintenance, and improvements; highway construction, maintenance, and improvements; forest management activities; and permits for mineral exploration and mining. The Service will work with the involved agencies to secure protection and proper management of *Echinacea laevigata* while accommodating agency activities to the extent possible.

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, 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 ancitipated that some trade permits will be sought because the species is already in cultivation and is a part of the commercial trade in native plants. Commercial sources of cultivated material should be encouraged in order to reduce pressure on wild populations. Requests for copies of the regulations on listed plants and inquiries regarding prohibitions and permits may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, room 432, Arlington, Virginia 22203 (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).

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Author

The primary author of this proposed rule is Ms. Nora Murdock (see "**ADDRESSES**" section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

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

Authority: 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 family Asteraceae, 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					
Asteraceae—Aster family:						
*	*	*	*	*	*	*
Echinacea laevigata	Smooth coneflower	U.S.A. (GA, MD, NC, PA, SC, VA)	E	481	NA	NA
*	*	*	*	*	*	*

Dated: September 23, 1992.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 92–24440 Filed 10–7–92; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 911176–2018]

Groundfish of the Gulf of Alaska

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

ACTION: Prohibition of retention.

SUMMARY: NMFS is prohibiting retention of sablefish by operators of vessels using trawl gear in the West Yakutat District of the Gulf of Alaska (GOA) and is requiring that incidental catches of sablefish be treated in the same manner as prohibited species and discarded at sea with a minimum of injury. This action is necessary because the share of the sablefish total allowable catch (TAC) assigned to trawl gear in the West Yakutat District has been reached.

EFFECTIVE DATE: Effective 12 noon, Alaska local time (A.l.t.), October 5, 1992, through 12 midnight, A.l.t., December 31, 1992.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Resource Management Specialist, Fisheries Management Division, NMFS, 907–586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the exclusive economic zone within the GOA is managed by the Secretary of Commerce according to the Fishery Management Plan for Groundfish of the GOA (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

The share of the sablefish TAC assigned to trawl gear in the West Yakutat District was established by the final notice of specifications (57 FR 2844, January 24, 1992) as 187 metric tons.

The Director of the Alaska Region, NMFS, has determined in accordance with § 672.24(c)(3)(ii), that the share of the sablefish TAC assigned to trawl gear in the West Yakutat District has been reached. Therefore, NMFS is requiring that further catches of sablefish by operators of vessels using trawl gear must be treated as prohibited species effective from 12 noon, A.l.t., October 5, 1992, through 12 midnight, A.l.t., December 31, 1992.

Classification

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

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

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

Dated: October 2, 1992.

Richard H. Schaefer,

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

[FR Doc. 92–24531 Filed 10–5–92; 3:39 am]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 57, No. 196
Thursday, October 8, 1992

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.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 34

Workshop to Discuss Topics Related to an Overall Revision of 10 CFR Part 34

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The Nuclear Regulatory Commission (NRC) staff plans to convene a public workshop with representatives of Agreement States to discuss the provisions of a proposed overall revision of its regulations concerning licenses for radiography and radiation safety requirements for radiographic operations. This revision is needed to clarify certain requirements which have frequently been misinterpreted by radiography licensees and have resulted in a large number of enforcement rulings. The revision is also needed to clarify some existing definitions and to incorporate additional definitions in order to bring NRC regulations more in line with regulations currently used by other organizations that regulate the radiography industry. In addition, the revision will ensure that the new regulations governing industrial radiography are compatible with other parts of NRC's regulations that involve radiation safety standards.

DATES: The workshop will be held on November 16–18, 1992. The times are:

Monday, November 16, 1992; 1:30 p.m.–5 p.m.

Tuesday, November 17, 1992; 8:30 a.m.–5:30 p.m.

Wednesday, November 18, 1992; 8:30 a.m.–12 noon

ADDRESSES: The meeting is to be held at the Crown Sterling Hotel, 4640 West Airport Highway, Irving, Texas (telephone number 214–790–0093).

FOR FURTHER INFORMATION CONTACT: Vandy L. Miller, Office of State Programs, Mail Stop 3D23, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 504–2326.

SUPPLEMENTARY INFORMATION: The regulations applicable to radiographic operations, 10 CFR part 34, were first published in 1965 as part of the recodification of parts 30 and 31 (30 FR 8298; June 26, 1965). Although numerous modifications to the original part 34 have been made since 1965, many radiography licensees are not complying with the present regulations. This has led to a considerable number of enforcement actions. A review of many of the violations indicates that much of the present regulation is unclear and confusing. This confusion frequently results in improper interpretation by the licensees. In light of this funding, it has been recommended that an overall revision to Part 34 be undertaken for the purpose of—

(1) Clarifying the regulation to reduce misinterpretations and subsequent enforcement actions; and

(2) Making the revised regulation more compatible with State regulations governing industrial radiography.

In developing the proposed revision, the NRC staff has reviewed the regulations of other regulatory agencies as recommended by the Commission and will attempt to keep the NRC's revised regulation compatible with these regulations wherever practical. Among the regulations considered were: "Suggested State Regulations for Control of Radiation," which was developed by the Conference of Radiation Control Program Directors, Inc., part 31 of the Texas Regulations for the Control of Radiation, Chapter 5 of the Louisiana Radiation Regulations, and Section 18 of the Canadian Atomic Energy Control Regulations. In addition, the NRC solicited recommendations on issues to be addressed in the revised regulation at the 1991 Sacramento meeting of the Agreement States, from NRC regional offices, and from some radiography equipment manufacturers and radiography licensees to augment the recommendations provided by the NRC staff.

The objective of this workshop is to conduct a round-table discussion with representatives of the Agreement States on the principal issues to be addressed in the proposed revision of 10 CFR part 34. Some of the principal issues to be discussed involve:

(1) The need for a new definition for a "Permanent Radiographic Installation;"

(2) The need for additional definitions such as "Field Station," "Temporary Job Site," "Safety Review," "Shielded Position," "Personal Supervision," etc;

(3) Training for radiographers' assistants;

(4) Whether two-person radiography crews should be required at temporary job sites;

(5) Whether to require the Radiation Safety Office to have additional training in emergency procedures such as source retrieval;

(6) Need for a requirement to survey for depleted uranium contamination;

(7) Type of records required at temporary job sites;

(8) Require before-use inspection of radiography associated equipment such as remote control, cables and projection sheath;

(9) Require radiographer's signature on radiography equipment utilization logs; and

(10) Need to specify additional requirements on maintenance of radiation survey instruments.

Conduct of the Meeting

The workshop will be co-chaired by Mr. Vandy L. Miller, Assistant Director for State Agreements Program and Dr. John E. Glenn, Chief, Medical, Academic, and Commercial Use Safety Branch, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission. The moderator will be Dr. Donald A. Cool, Chief, Radiation Protection and Health Effects Branch, Division of Regulatory Applications, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission. The workshop will be conducted in a manner that will expedite the orderly conduct of business. A transcript of the workshop will be available for inspection, and copying for a fee, at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC 20555 on or about December 17, 1992.

The following procedures apply to public attendance at the workshop:

1. Questions or statements from attendees other than participants, i.e., participating representatives of each Agreement State and participating NRC staff, will be entertained as time permits.

2. Seating for the public will be on a first-come, first-served basis.

Dated at Rockville, Maryland this 30 day of September 1992.

For the Nuclear Regulatory Commission.

Carlton Kammerer,

Director, Office of State Programs.

[FR Doc. 92-24502 Filed 10-7-92; 8:45 am]

BILLING CODE 7590-01-M

FEDERAL ELECTION COMMISSION

11 CFR Parts 100 and 114

[Notice 1992—19]

Definition of "Member" of a Membership Association

AGENCY: Federal Election Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Election Commission is seeking comments on a proposal to amend the definition of "member" of a membership association contained in 11 CFR parts 100 and 114 to add several new criteria. the Federal Election Campaign Act of 1971 as amended, ["FECA" or "the Act"] 2 U.S.C. 431 *et seq.*, permits membership associations to solicit contributions from their members for a separate segregated fund ["SSF"], which contributions can be used for political purposes.

These requirements would apply to individuals, corporations, and all other persons.

DATES: Comments must be received on or before November 20, 1992. The Commission will hold a hearing on December 9, 1992. Persons wishing to testify should so indicate in their written comments.

ADDRESSES: Comments must be in writing and addressed to: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street, NW., Washington, DC 20463. The hearing will be held in the Commission's ninth floor meeting room, 999 E Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, (202) 219-3690 or (800) 424-9530.

SUPPLEMENTARY INFORMATION: Under 2 U.S.C. 441b(b)(4)(C), a membership organization, cooperative, or corporation without capital stock, or a separate segregated fund established by such an entity, may solicit contributions to the SSF from its "members." Current 11 CFR 100.8(b)(4)(iv) and 114.1(e) define "members" to include all persons who are currently satisfying the requirements for membership in any such membership association.

The current regulations were adopted in 1977. Since that time, the United States Supreme Court has addressed this issue, and the Commission has issued numerous advisory opinions interpreting the regulatory language.

The Supreme Court decision, *Federal Election Commission* v. *National Right to Work Committee* (NRWC), 459 U.S. 196 (1982), involved a nonprofit, noncapital stock corporation whose articles of incorporation stated that it had no members. The NRWC argued, however, that it should be able to treat as members, and thus solicit funds to its SSF from, individuals who had at one time responded, not necessarily financially, to an NRW advertisement, mailing, or personal contact. The Supreme Court rejected this definition of "member," stating that to accept it "would virtually excise from the statute the restriction of solicitation to 'members.' " *Id.* at 203.

Relying on 2 U.S.C. 441(b)(4)(C)'s brief legislative history, the Court determined that "members" of nonstock corporations should be defined, at least in part, by analogy to stockholders of business corporations and members of labor unions. As stated by the Court, viewing the question from this perspective meant that "some relatively enduring and independently significant financial or organizational attachment is required to be a 'member' " under that section. *Id.* at 204.

Since the *NRWC* decision, the Commission has issued a number of Advisory Opinions on this point. In these opinions, the Commission has generally required both a financial attachment, usually the regular payment of dues, and a meaningful organizational attachment, usually the right to vote for at least some members of the membership association's governing board, before a person is considered a member for purposes of 2 U.S.C. 441(b)(4)(C). See, e.g., Advisory Opinions 1984-33, 1987-13, 1990-18, and 1991-24. These requirements apply not only to individual members, but to corporate and other members as well. E.g., Advisory Opinions 1984-33, 1986-13, and 1989-18.

However, there are exceptions to this general statement. For example, the Commission has not required voting rights when a person's financial stake was so substantial that this alone was thought sufficient to impose membership status. See Advisory Opinions 1987-31 and 1988-39.

The Commission is seeking to articulate a general rule that will reduce the need for individual membership associations to seek advisory opinions, based on each association's unique set of circumstances. The Commission therefore proposes to amend the definition of "member" set forth at 11 CFR 100.8(b)(4)(iv) and 114.1(e). The proposed definitions are identical, as is currently the case.

The proposed definition first defines "membership association; to include any membership organization; trade association; cooperative; corporation without capital stock; or a local, national, or international labor organization that meets two additional requirements.

First, the membership association's articles and by-laws would have to provide for "members." This part of the definition would exclude membership associations (such as the NRWC at the time of the Supreme Court decision) whose by-laws specifically state that they have no members.

Second, the membership association would have to expressly accept the proffered membership; and the association would have to expressly solicit members; members would have to expressly acknowledge this acceptance. It could make this acknowledgment by sending a membership card, including the member on a membership newsletter list, or in some comparable manner. A membership association could not send out unsolicited membership cards and then treat the recipients as members for solicitation purposes, unless these further requirements were also met. The Commission welcomes comments on what, if any, other types of contacts should be sufficient to satisfy this criterion of membership.

The proposed definition then builds on the current definition of "member," by stating that that term includes all persons who are currently satisfying the requirements for membership in a membership organization; trade association; cooperative; or corporation without capital stock and, in the case of a labor organization, persons who are currently satisfying the requirements for membership in a local, national, or international labor organization. It then details the necessary financial and organizational ties that would be required, in the case of most members. (Consistent with the FECA's legislative history, members of a local union would continue to be considered members of any national or international union of which the local union is a part and of any federation with which the local, national, or international union is affiliated, regardless of whether they met these additional requirements.) The new requirements would supersede the last sentence of the current definition,

which states that a person is not considered a member of an association if the only requirement for membership is a contribution to an SSF.

The Commission anticipates that, in most instances, members will have both financial ties to the membership association, and some right to vote for the associations's officers or directors. However, there may be an occasional situation where a person's financial or organizational tie is so strong as to in and of itself be sufficient to confer membership status. The proposed language thus provides three different methods of meeting this requirement.

First, a person could have a significant financial attachment to the membership association, such as an investment or ownership stake. The proposed regulation does not define "significant" for this purpose, other than to state that the mere payment of dues would not be sufficient to satisfy this requirement. However, the Commission intends that this attachment be substantial, and notes that a nominal investment would not be sufficient for this purpose. If this financial attachment was present, no voting rights would be necessary.

Second, a person could be obligated to pay regular dues, in an amount predetermined by the association, and also be entitled to vote directly either for a majority of those on the highest governing body of the membership association, or for those who select the majority of those on the highest governing body. The Commission anticipates that this situation would apply to most membership associations.

Third, a person could be entitled to vote directly for the entire membership of the association's highest governing body. In this case, no financial ties (such as dues) would be required.

Under both the second and third methods, the draft rules recognize only those voting rights which entitle a member to vote to elect a membership association's officers or directors. The right to vote on policy statements and similar matters would not be sufficient to satisfy this requirement.

It should also be noted that, as drafted, the voting rights envisioned under the second method clearly include two-tiered associations, such as those in which members vote for delegates to a convention, and those delegates elect those who serve on the association's highest governing body. The Commission welcomes comments on whether this approach should be expanded to three- or more-tiered associations, such as those with national, state, and local levels. In particular, are there circumstances under which a member of a local branch of a national association can be considered to have sufficient direct involvement with the national level to qualify as a member of the national association under this rule?

In proposing this rule, the Commission is mindful of the *NRWC* Court's admonition that the Commission not "open the door to all but unlimited corporate solicitation and thereby render meaningless the statutory limitation to 'members.' " 459 U.S. at 204. However, the Commission welcomes comments on what, if any, other membership indicia should be considered, for purposes of the proposed rule.

Certification of No Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)

The attached proposed rules would not, if promulgated, have a significant economic impact on a substantial number of small entities. The basis for this certification is that any small entities affected are already required to comply with the requirements of the Federal Election Campaign Act in this area.

List of Subjects

11 CFR Part 100

Elections.

11 CFR Part 114

Business and industry, Elections, Labor.

For reasons set out in the preamble, it is proposed to amend subchapter A, chapter I of title 11 of the Code of Federal Regulations as follows:

PART 100—SCOPE AND DEFINITIONS (2 U.S.C. 431)

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

Authority: 2 U.S.C. 431, 438(a)(8).

2. Section 100.8 would be amended by revising paragraph (b)(4)(iv) to read as follows:

§ 100.8 Expenditure (2 U.S.C. 431(9)).

* * * * *

(b) * * *

(4) * * *

(iv)(A) For purposes of paragraph (b)(4)(iv) of this section, *membership association* means a membership organization, trade association, cooperative, corporation without capital stock, or a local, national, or international labor organization that

(*1*) Expressly provides for "members" in its articles and by-laws;

(*2*) Expressly solicits members; and

(*3*) Expressly acknowledges the acceptance of membership, such as by sending a membership card or inclusion on a membership newsletter list.

(B) For purposes of paragraph (b)(4) of this section, *members* means all persons who are currently satisfying the requirements for membership in a membership association, affirmatively accept the membership association's invitation to become a member, and either:

(*1*) Have some significant financial attachment to the membership association, such as a significant investment or ownership stake (but *not* merely the payment of dues);

(*2*) Are required to pay on a regular basis a specific amount of dues that is predetermined by the association and are entitled to vote directly either for a majority of those on the highest governing body of the membership association, or for those who select the majority of those on the highest governing body of the membership association; or

(*3*) Are entitled to vote directly for all of those on the highest governing body of the membership association.

(C) Notwithstanding the requirements of paragraphs (b)(4)(iv) (B) (*1*)–(*3*) of this section, members of a local union are considered to be members of any national or international union of which the local union is a part and of any federation with which the local, national, or international union is affiliated.

* * * * *

PART 114—CORPORATE AND LABOR ORGANIZATION ACTIVITY

3. The authority citation for part 114 would continue to read as follows:

Authority: 2 U.S.C. 431(8)(B), 431(9)(B), 432, 437d(a)(8), 438(a)(8), and 441b.

4. Section 114.1 would be amended by revising paragraph (e) to read as follows:

§ 114.1 Definitions.

* * * * *

(e)(1) *Membership association* means a membership organization, trade association, cooperative, corporation without capital stock, or a local, national, or international labor organization that

(i) Expressly provides for "members" in its articles and by-laws;

(ii) Expressly solicits members; and

(iii) Expressly acknowledges the acceptance of membership, such as by sending a membership card or inclusion on a membership newsletter list.

(2) *Members* means all persons who are currently satisfying the requirements for membership in a membership association, affirmatively accept the membership association's invitation to become a member, and either:

(i) Have some significant financial attachment to the membership association, such as a significant investment or ownership stake (but *not* merely the payment of dues);

(ii) Are required to pay on a regular basis a specific amount of dues that is predetermined by the association and are entitled to vote directly either for a majority of those on the highest governing body of the membership association, or for those who select the majority of the highest governing body of the membership association; or

(iii) Are entitled to vote directly for all of those on the highest governing body of the membership association.

(3) Notwithstanding the requirements of paragraphs (e)(2) (i)–(iii) of this section, members of a local union are considered to be members of any national or international union of which the local union is a part and of any federation with which the local, national, or international union is affiliated.

* * * * *

Dated: October 2, 1992.

Joan D. Aikens,

Chairman, Federal Election Commission.

[FR Doc. 92-24351 Filed 10-7-92; 8:45 am]

BILLING CODE 6715-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92-NM-148-AD]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, that currently requires that the FAA-approved maintenance inspection program include inspections which will give no less than the required damage tolerance rating (DTR) for each Structural Significant Item (SSI). This proposal would revise the existing AD to require additional and expanded inspections, and to include additional airplanes in the candidate fleet. This proposal is prompted by a structural re-evaluation by the manufacturer which identified additional structural elements where fatigue damage is likely to occur. The actions specified by the proposed AD are intended to ensure the continuing structural integrity of the total Boeing Model 747 fleet.

DATES: Comments must be received by November 23, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-148-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Steven C. Fox, Aerospace Engineer, Seattle Aircraft Certification Office, Airframe Branch, ANM-120S, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2777; fax (206) 227-1181.

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 shall identify the Rules 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 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 postcard on which the following statement is made: "Comments to Docket Number 92-NM-148-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-148-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion: On December 11, 1989, the FAA issued AD 84-21-02 R1, Amendment 39-6430 (55 FR 1005, January 11, 1990), applicable to certain Boeing Model 747 series airplanes, to require a revision to the FAA-approved maintenance inspection program. That AD requires that the Structural Significant Items (SSI's) listed in Boeing Supplemental Structural Inspection Document (SSID) D6-35022, Revision C, dated April 1989, be inspected on candidate airplanes so that at least a specified Damage Tolerance Rating (DTR) is maintained. The SSID includes instructions on how DTR's are determined. That action was prompted by a structural re-evaluation by the manufacturer which identified additional structural elements where fatigue damage is likely to occur. That condition, if not corrected, could result in failure to detect cracks in an SSI, which would result in loss of structural integrity.

Since the issuance of that AD, the manufacturer has reassessed the inspections required for certain SSI's and, based on this reassessment, has revised the Model 747 SSID. The FAA has reviewed and approved Boeing Supplemental Structural Inspection Document (SSID) D6-35022, Revision D, dated February 1992, that describes procedures to revise the FAA-approved maintenance inspection program for certain Boeing Model 747 series airplanes. This revision of the Model 747 SSID incorporates additional and expanded inspections. This revision also expands the effectivity listing to include additional airplanes to be included in the candidate fleet, line positions 137 and 197. Incorporation of the inspections and repairs described in this document will ensure the continuing structural integrity of the total Boeing Model 747 fleet.

Since the failure of an SSI can lead to an unsafe condition, and since such conditions are likely to exist or develop on other Model 747 airplanes, the FAA has determined that it is necessary to

revise the maintenance programs of the airplanes in the candidate fleet to include additional and expanded inspections. Therefore, an AD is proposed which would supersede AD 84-21-02 R1 to require that the FAA-approved maintenance inspection programs for candidate airplanes be revised to provide no less than the DTR's listed in Revision D of the SSID described previously.

There are approximately 113 Boeing Model 747 series airplanes of the affected design in the worldwide fleet. This number includes two airplanes that would be added to the affected worldwide fleet via this proposal. The FAA estimates that 80 airplanes of U.S. registry and 8 U.S. operators would be affected by this proposed AD. (No additional U.S.-registered airplanes would be affected by this proposal). It is estimated that the implementation of the SSID program for a typical operator would take approximately 1,000 work hours. It is also estimated that the average labor cost would be $55 per work hour. Based on these figures, the cost to implement the SSID program is estimated not to exceed $440,000.

The recurring inspection impact on the affected operators is estimated to be 1,275 work hours per airplane at an average labor cost of $55 per work hour. Based on these figures, the annual recurring cost of this AD is estimated not to exceed $5,610,000.

Based on the figures discussed above, the total cost impact of this proposal for the first year is estimated not to exceed $6,050,000. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD 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 proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the 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 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, 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—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 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 removing amendment 39-6430 (55 FR 1005, January 11, 1990), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 92-NM-148-AD. Supersedes AD 84-21-02 R1, Amendment 39-6430.

Applicability: Model 747 series airplanes, as listed in Section 3.0 of Boeing Document No. D6-35022, "Supplemental Structural Inspection Document" (SSID), Revision D, dated February 1992, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To ensure the continuing structural integrity of the total Boeing Model 747 fleet, accomplish the following:

(a) For airplanes listed in Boeing Document D6-35022, Revision C, dated April 1989: Within 3 months after February 12, 1990 (the effective date of AD 84-21-02 R1, Amendment 39-6430), incorporate a revision into the FAA-approved maintenance inspection program which provides no less than the required Damage Tolerance Rating (DTR) for each Structural Significant Item (SSI) listed in Boeing Document D6-35022, Revision C, dated April 1989. (The required DTR value for each SSI is listed in the document.) The revision to the maintenance program shall include and be implemented in accordance with the procedures in Sections 5.0 and 6.0 of the SSID.

(b) For airplanes listed in Boeing Document D6-35022, Revision D, dated February 1992: Within 12 months after the effective date of this AD, replace the revision of the FAA-approved maintenance inspection program required by paragraph (a) of this AD with a revision that provides no less than the required Damage Tolerance Rating (DTR) for each Structural Significant Item (SSI) listed in Boeing Document D6-35022, Revision D, dated February 1992. (The required DTR value for each SSI is listed in the document.) The revision to the maintenance program shall include and be implemented in accordance with the procedures in Sections 5.0 and 6.0 of the SSID.

(c) Cracked structure must be repaired, prior to further flight, in accordance with an FAA-approved method.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(e) 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.

Issued in Renton, Washington, on September 21, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-24510 Filed 10-7-92; 8:45 am]

BILLING CODE 4910-13-M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Parts 1500 and 1505

Proposed Exemption of Video Games

AGENCY: Consumer Product Safety Commission.

ACTION: Proposed rule.

SUMMARY: The Commission proposes to exempt video games from its safety regulations applicable to electrically-operated toys and other electrically-operated articles intended for use by children. Although many video games fall within the scope of these regulations, the Commission never enforced these regulations with respect to these games. Video games are associated with very few injuries and generally comply with nationally-recognized voluntary standards for electrical safety. The available information indicates that applying the regulations for electrically-operated toys' additional provisions for testing, recordkeeping, and labeling would be unlikely to prevent any of the injuries associated with video games. The proposed exemption is in response to a request from the Electronic Industries Association.

DATES: Comments on the proposed amendments should be submitted to the

Office of the Secretary by December 22, 1992.

This change is proposed to become effective 30 days after publication of a final rule in the Federal Register.

ADDRESSES: Comments on the proposal should be mailed to the Office of the Secretary, Consumer, Product Safety Commission, Bethesda, Maryland 20207, or delivered to the Office of the Secretary, room 422, 5401 Westbard Avenue, Bethesda, Maryland 20816.

FOR FURTHER INFORMATION CONTACT: David W. Thome, Office of Hazard Identification and Reduction, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0554.

SUPPLEMENTARY INFORMATION:

I. Background

A. Electrically-operated Toys

The Consumer Product Safety Commission ("Commission" or "CPSC") currently administers the Federal Hazardous Substances Act ("FHSA"), 15 U.S.C. 1261–1276. Before the Commission was created, the FHSA was administered by the Food and Drug Administration ("FDA"). In 1972, the FDA proposed safety regulations under the FHSA for electrically-operated toys and other electrically-operated articles intended for use by children. In 1973, the FDA issued these regulations, and the Commission later republished them in the Code of Federal Regulations at 16 CFR 1500.18(b)(1) and part 1505. 38 FR 6138 (March 7, 1973) and 38 FR 27032 (Sept. 27, 1973).

The regulations for electrically-operated toys apply to "any toy, game, or other article designed, labeled, advertised, or otherwise intended for use by children which is intended to be powered by electrical current from nominal 120 volt (110–125 V.) branch circuits." 16 CFR 1505.1(a)(1). They do not apply to components powered by circuits of 30 volts rms (42.4 volts peak) or less, or to articles designed primarily for use by adults that may be used incidentally by children. *Id.*

The Commission's regulations for electrically-operated toys contain requirements for labeling, manufacturing, electrical design and construction, performance, and maximum acceptable temperatures for surfaces and materials. If any toy or other children's article fails to meet a regulatory requirement, it is a "banned hazardous substance" under the FHSA. 15 U.S.C. 1261(q)(1)(A).

B. Application to Video Games of the Regulations for Electrically-operated Toys

In 1972, the Electronic Industries Association's Consumer Electronics Group ("EIA/CEG") asked FDA for an interpretation of the proposed regulations for electrically-operated toys as they applied to consumer electronic equipment (February 17, 1972, letter from J. Edward Day, Esq.). FDA's Deputy Commissioner responded that "I should like to assure you that the proposal * * * is not intended to apply to television and radio receivers, phonographs, tape equipment, and audio components" (March 2, 1972, letter from FDA Deputy Commissioner James D. Grant). However, FDA indicated that the rule would apply to record players intended specifically for use by small children. *Id.*

Since the early 1970's a wide variety of video games have been marketed. In 1982, the Commission's compliance staff decided that the regulations for electrically-operated toys applied to video games and informed certain video game manufacturers of this determination. The EIA/CEG and some manufacturers disagreed with that decision, and the industry made plans to petition the Commission for an exemption from the regulations. The compliance staff decided informally not to enforce the regulations against video games while such a petition was under consideration.

C. EIA/CEG Petition for an Exemption for Video Games

On December 21, 1983, EIA/CEG submitted its petition (docketed by the Commission as petition HP 84–1). The petition made the following points:

1. Most video games are designed for teenagers and adults.
2. Application of the regulations for electrically-operated toys to video games raises insurmountable definitional problems.
3. Video game safety is already assured.
4. The regulations burden manufacturers with recordkeeping, testing, and labeling requirements.
5. Commission policy would be served by excluding video games from the regulations.

Despite its request for an exemption, the EIA/CEG did not concede that video games actually fall within the scope of the regulations. The petition asserted that the regulations were never intended to cover electronic video games because (a) such games do not fall within the traditional scope of the regulations and (b) they are like televisions and other home entertainment devices that FDA had indicted were not subject to the regulations for electrically-operated toys.

II. Interpretation of the Applicability to Video Games of the Regulations for Electrically-operated Toys.

Video games as a product group are difficult to define, but, for the purposes of this proposed exemption, the term video games refers to video game hardware systems, which consist of games which produce a dynamic video image and which have some way to control movement of portions of the video image. The image may be produced on a specially manufactured viewing screen or, by the use of cables or remote controls, on a television set. The term includes only hardware systems (the console, cables, and controls); nonelectrical software systems (the video game cartridges) are not included.

The Commission concludes that video games, as defined above, are products intended for use by children, as that term is used in section 2(f)(1)(D) of the FHSA, and are thus subject to the electrically-operated toy regulation if they are powered by current from nominal 120 volts branch circuits. According to one recent case that interpreted the meaning of "[a]ny toy or other article intended for use by children" in the FHSA, an objective test of intent must be used, *i.e.*, a product is a toy or other article intended for use by children if a reasonable person would believe that the object is a toy or article intended for use by children. *U.S.* v. *Articles of Banned Hazardous Substances Consisting of 1030 Gross (More or Less) of Baby Rattles*, 614 F. Supp. 226, 231 (E.D.N.Y. 1985). A U.S. Court of Appeals held that the determination of such intent "is vested in the sound discretion of the Commission." *Forester* v. *CPSC*, 559 F.2d 774 (D.C. Cir. 1977).

In addition, the fact that a children's product is also used by adults does not mean that the product is not intended for use by children. The Forester case was a challenge to the Commission's regulation of bicycles under the FHSA. Before issuing the regulation, the Commission had found that a large percentage of bicycles were of types that were used by adults, children, and adolescents, and that was no precise way of distinguishing between the ones intended exclusively for adults and those intended for children as well as adults. 39 FR 26100 (1974). The Court upheld the bicycle regulation, refusing to find that the Commission "abused its

discretion or acted contrary to law in determining that all bicycles except those excluded from the regulation are 'intended for use by children.' " Forester at 786.

In a more recent case, a Court considered FHSA jurisdiction over lawn darts. *First National Bank of Dwight* v. *Regent Sports Corp.*, 803 F.2d 1431 (7th Cir. 1986). The Court stated that sports equipment intended for the use of children falls within the statutory definition.

Under these principles, the Commission concludes that video games, as a product class, are intended for use by children and fall within the meaning of the FHSA term "toy or other article intended for use by children." Based on such objective factors, as advertising, marketing, and use patterns for these products, the Commission concludes that use of video games by children is reasonably foreseeable and that video games are therefore intended for use by children.

The Commission also concluded that most video games are the types of electrically-operated toys or articles intended for use by children that are within the scope of the regulation since they are intended to be powered from nominal 120 volt branch circuits. Video games that can be powered only by batteries are not currently subject to the regulation.

Only video games are described above are being proposed to be exempted. However, the Commission notes that a product is not covered by the regulation in the first place unless it is a "toy or other article used by children" as that term is used in section 2(f)(1)(D) of the FHSA, 15 U.S.C. 1261(f)(1)(D). Many home computers, for example, are not specifically adapted for the use of children, and are thus not subject to the regulation for electrically-operated toys. For example, a home computer whose ability to function as a video game is incidental to other functions it can perform, which does not contain features intended to make the computer especially suitable for children, and which is not marketed as being especially advantageous for the use of children may not be considered to be intended for use by children. In any event, such home computers would seem to fall within the intent of FDA's earlier interpretation that TV sets and other articles intended for the use of adults, but that are also used by children, are not within the scope of the regulation. The Commission sees no reason why this earlier interpretation by FDA should be changed.

III. Effects of Applying the Regulations for Electrically-Operated Toys to Video Games.

The Commission's Directorate for Epidemiology has reports of 27 incidents from January 1980 through September 1991 that may be related to the electrical aspects of products subject to this petition. Twenty-three of these incidents involved fires. Of these 23 fire incidents, five reports indicated that the fire was caused by either the video game or a television set, five reports cited short circuits, four cited the transformer or the AC adapter, one an overload in the AC circuit, one an overload of a video computer game, and one a lighted frame attachment for a hand-held video game. The remaining six fire incidents were categorized as involving video games, but the specific cause was not reported. The four remaining non-fire electrical incidents included one alleged "explosion" without injury and two incidents where electrical burns or shock occurred while the video game or adaptor was being plugged in.

There were five deaths and 10 injuries associated with the 27 reported incidents. One of the fire incidents resulted in four fatalities, but the exact involvement of the video game as a fire source was not established in that case. The other death occurred in a house fire started when an electrical adapter for a video game overheated while it was plugged into an electrical outlet.

Electronic video games are currently designed and tested to an existing voluntary standard (UL 961, Hobby and Sports Equipment). The Commission's Engineering Staff compared the Commission's regulations for electrically-operated toys with UL 961 to determine how effective each standard is in addressing electrical and thermal hazards associated with video games.

The Commission concludes that, despite differences in the requirements for video games in the CPSC regulation and the UL standard, there would not be a significant decrease in the risk of injury to children if the Commission enforced its regulation. The staff was unable to conclude from the 27 reports of incidents involving video games that any of these incidents would have been prevented had the games complied with all the requirements of the CPSC regulation for electrically-operated toys rather than only with the UL standard. Although the CPSC regulations do contain more stringent requirements in some areas, these deal with accessibility to live parts, labeling, and excessive surface temperatures in normal operation (to protect against burns, not against fires caused by failures or defects, which are addressed by the UL standard). None of the risks addressed by the CPSC standard but not the UL standard was found to be involved in the 27 known incidents, most of which were reported as fires.

If the regulations for electrically-operated toys were applied to video games, industry would incur a number of costs. These would include testing each model for compliance, keeping records of such testing, maintaining the records for three years and labeling the games' packaging and transformers.

IV. Regulatory Analysis

Under the FHSA, the Commission is required to develop a preliminary regulatory analysis containing a discussion of various factors, including a preliminary description of the potential benefits and potential costs of the proposed regulation, including any benefits or costs that cannot be quantified in monetary terms, an identification of those likely to receive the benefits and bear the cost, and a description of any reasonable alternatives to the proposed regulation, together with a summary description of their potential costs and benefits and brief explanation why such alternatives should not be published as a proposed regulation.

A. Cost and Benefits of the Proposed Exemption

The potential cost of exempting electronic video games from the current regulation consists of the possibility that future injuries or deaths would be associated with games that did not comply with the regulation's requirements and that such injuries and deaths would have been prevented if the games had complied with the regulations. The Commission is aware of 23 fire incidents that occurred during the period from January 1, 1980, to October 1, 1991, that may have been related to the electrical aspects of products that would be subject to this proposed exemption. In most of these cases, the available information does not permit a determination of whether a video game was responsible for the fire. The Commission's Engineering Sciences staff concluded that "[a] review of incidents associated with video games did not reveal any that would have been prevented had the games been manufactured in accordance with the requirements of the Federal regulation 16 CFR part 1505." At the end of 1990, there were an estimated 35–40 million video games in use. Video games are found in an estimated 40 percent of U.S. households.

Costs may also be incurred if future sales of video games included units which were significantly more hazardous than those marketed over the last decade. However, there is no information to suggest that future entrants would market poorer quality hardware in order to obtain a price advantage, and the cost of hardware is not the primary determinant of demand. The current market is dominated by four firms, one of which accounts for nearly 90 percent of total sales. The current market leaders reached their market dominance through the marketing of popular game cartridges that are compatible only with their own hardware. Purchase decisions appear to be driven by the amount and popularity of the games' software, rather than by the price of the hardware systems.

Potential costs, if any, would be borne by families and friends of purchasing consumers. The Commission's staff estimates that 40 percent of U.S. homes have at least one "second generation" (8-bit) video game. Trade sources indicate that this segment of the video game market is not expected to increase significantly, and these games are directed most heavily (through advertising and software content) at those households with members aged 8–18. Bureau of the Census statistics indicate that about 27 percent of the total number of family units in the United States have members in this age group. The product also sees considerable use outside the target population. "Second generation" systems also see considerable use outside the target population. Future increases in households owning video games are expected to come from "third generation" (16-bit) and "fourth generation" (24-bit) systems, which currently are primarily targeted at adults. An estimated 3 percent of U.S. households will have "third generation" systems by the end of 1991.

Based on available epidemiological and engineering information, the CPSC staff expects no potential injuries or deaths to be associated with an exemption of video games from the electric-toy regulations. Thus, there will be no societal costs imposed by the exemption.

The proposed exemption would provide benefits to manufacturers through a continued avoidance of cost increases associated with compliance with the electric-toy regulations. The future purchasers of these products would also receive these benefits through the avoidance of retail price increases related to compliance. Manufacturers and retailers would also benefit through the elimination of uncertainty about enforcement of existing regulations, and from clarification of the requirements applicable to future product development.

The imposition of the requirements of 16b CFR part 1505 on video games would add certain costs to their production. As noted above, current production is designed and tested to an existing voluntary standard (UL 961, Hobby and Sports Equipment), and there are differences between requirements under the voluntary UL standard and the mandatory regulations under 16 CFR part 1505. For example, the mandatory regulation requires labels on both packages and instructional literature, while the UL standard requires labeling only on the product itself. (The per-unit costs of increased labeling, however, are not likely to be significant.) There are also differences between the tow standards in construction and performance requirements.

Trade sources indicate that compliance with the CPSC electric-toy regulations could require a significant retooling of the hardware, and video game consoles could have to be significantly changed. For instance, the plastic console may require reinforcement in order to meet the CPSC regulation's drop test, compression test, and pressure test requirements. Also, the existing CPSC regulation would not allow detachable cords, which may affect the portability of video hardware systems. Each of these modifications could entail design and production cost increases.

Modification of the hardware also could require modification of the game cartridges. If this occurred, existing machines might be incompatible with future cartridges, resulting in increased costs to consumers wishing to compile a library of video games, or in decreased utility for those who are not in a position to purchase the modified hardware and software. Such a situation may result in a consumer rejection of the concept of home video games, as occurred in the early 1980's. This type of consumer rejection is not similar to consumers switching to third generation systems, which because of superior visual quality and graphics, provide a more desirable product to the consumer.

Industry sources have not indicated what the expected per-unit price increase would be if the mandatory standard were applied to future production of video games; however, the total cost to society could be substantial due to the numbers of units involved. Over the period 1985–90 (the period during which current "second-generation" video games have been marketed), video game hardware sales averaged about six million units annually; an estimated 9.5 million units were sold in 1988, at an average retail price of about $120 each. If the required modifications added only a 1 percent increase at retail, the annual cost to consumers could be about $7 million (based on average sales).

Hand-held video games are designed to be used with batteries. Hand-held video games that are not sold with AC adapters are not subject to the regulations for electrically-operated toys because they operate on less than 30 V rms. Some hand-held units, however, are sold with adapters that step down the AC house voltage to the voltage provided by the batteries. In this case, the AC adapter and the video game's package would be subject to the requirements of the electrically-operated toy regulation because the adapter operates off 120 volts.

Hand-held units are not included in the analysis given above because the Commission's staff does not know what percentage of hand-held units are subject to the regulations for electrically-operated toys because they are sold with AC adapters. To the extent such units would need to be changed if the Commission were to enforce this regulation, however, the annual costs to consumers given above would be increased. (An estimated four million hand-held units were sold in 1990, at an average price of about $90.)

Industry sources indicate that compliance with the existing electric-toy regulation would also impose additional recordkeeping, testing, and labeling costs on manufacturers. These sources indicate that compliance with the existing rule "would impose substantial burdens on manufacturers." These costs would likely be passed on to purchasers in the form of higher prices.

Another benefit of the proposed exemption, considered by industry sources to be significant, would be the elimination of market uncertainty involving future sales of these products. Recent products have been designed to be in compliance with the UL standard. If the more stringent mandatory standards are applied (despite the lack of known safety benefits), the product features required by such standards may place limitations on the innovations that can be designed for these products. The Commission is unable to determine the extent to which this consideration would be a significant benefit of the proposed exemption. To the extent it is,

however, withholding the exemption could have an adverse effect on innovation.

The selection of an effective date to occur as early as 30 days after publication of the final rule in the Federal Register would have little or no effect on the quantifiable costs and benefits associated with this exemption. Manufacturers and marketers would be expected to receive some benefits associated with removal of market uncertainty; these benefits would accrue at the time the industry became aware of the rule, rather than at the effective date. Thus, the timing of the effective date is not likely to affect marketers or consumers of these products.

B. Alternatives to the Proposed Rule

As one alternative to the proposed exemption, the Commission could determine that electronic video games should comply with the existing electric-toy regulation. The Commission considered this option and preliminarily decided to reject this alternative because the uncertain level of benefits accruing through enforcement may be significantly less than potential costs associated with this option.

Another alternative would be for the Commission to issue a statement of enforcement policy stating that the Commission would not enforce the existing regulation as to video games. However, such a statement of policy may not assuage manufacturers' concerns over continued future action involving video games. The resulting uncertainty may lead to market disruption through postponements in innovation.

Because electronic video games are currently designed and tested to existing voluntary standard UL 961, another possible alternative to the proposed exemption of video games from the present mandatory standard would be to amend the mandatory standard to be essentially identical to the current UL standard. This would not be a feasible or desirable alternative for two reasons. First, the Commission is prohibited by statute from issuing a mandatory standard for a product when there is an adequate applicable voluntary standard for the product and there is substantial compliance with such voluntary standard. FHSA section 3(i)(2)(A); 15 U.S.C. 1262(i)(2)(A). This appears to be the situation with respect to video games and UL 961. Second, it is quicker and more feasible to revise a voluntary standard in response to changes in a product's design or use than it is to revise a mandatory standard.

The Commission preliminarily determined that the available feasible alternatives may not address the concerns of the parties that petitioned the Commission for an exemption. Further, potential future hazards from video games with design or manufacturing defects may be addressed through section 15(c) of the FHSA, 15 U.S.C. 1274(c), without reliance on the existing regulations for electrically-operated toys.

V. Environmental Impact

Pursuant to the National Environmental Policy Act, and in accordance with Council on Environmental Quality regulations and CPSC procedures for environmental review, the Commission's staff performed a preliminary assessment of the environmental impact associated with the proposed rule. The assessment addresses the potential effects of an exemption of video games from existing regulations for electrically-operated toys.

The proposed rule is not expected to affect preexisting packaging, molds, printed circuit boards, plastic stocks, production processes, or other materials of construction now in the hands of manufacturers. Thus, there would be no destruction or discarding of existing materials. Existing inventories of finished products, including those at retail, would not be rendered unusable through the implementation of the rule. Further, inventories would not require retrofit in order to comply with the exemption.

The requirements of the rule are not expected to have a significant effect on the materials used in production or packaging of video games, or on the amount or types of materials discarded after the rule. Therefore, the Commission preliminarily finds that no significant environmental effects will result from the proposed exemption for video games.

VI. Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act (RFA, 5 U.S.C. 601–612) requires agencies to prepare, and make available for public comment, an initial regulatory flexibility analysis whenever a general notice of proposed rulemaking is required for a proposed rule. Such analysis shall describe the impact of the proposed rule on small businesses, small organizations, and small government jurisdictions.

Since this proposed exemption merely formalizes existing industry and regulatory practices and does not make substantial changes in the Commission's enforcement activities, it is not likely to have a significant impact on small businesses or other small entities. Accordingly, the Commission certifies that this regulation will not have a significant economic impact on a substantial number of small entities.

VII. Rulemaking Procedure

The Commission's regulations for electrically-operated toys were issued under the authority of section 2(f)(1)(D) of the FHSA, 15 U.S.C. 1261(f)(1)(D), which includes within the definition of hazardous substance "[a]ny toy or other article intended for use by children which the [Commission] by regulation determines, in accordance with section 3(e) of [the FHSA, 15 U.S.C. 1262(e)], presents an electrical, mechanical, or thermal hazard." Under section 3(e)(1), 15 U.S.C. 1262(e)(1), the Commission may use the notice-and-comment procedures of 5 U.S.C. 553 to determine that a toy or other article intended for use by children presents an electrical, mechanical, or thermal hazard. The Commission concludes that the additional procedures in sections 3(f)–(i) of the FHSA are intended to apply where products that previously could be manufactured are being banned, and not where, as here, products are being exempted from existing requirements. Sections 3(f)–(i) provide for an advance notice of proposed rulemaking and detailed findings designed to ensure that the regulation is necessary to reduce or eliminate an unreasonable risk of injury. These types of findings are inappropriate when an exemption is being considered.

VIII. Conclusion

As discussed above, many video games fall within the FHSA's definition of toys and other articles intended for use by children, as well as within the scope of the Commission's regulations for electrically-operated toys. 15 U.S.C. 1261(f)(1)(D); 16 CFR part 1505. However, video games present a small risk of injury to children, and application of the regulations to video games would be unlikely to reduce future injuries to children. At the same time, compliance with the regulations for electrically-operated toys would involve testing, recordkeeping, and labeling costs for manufacturers. Therefore, the Commission granted petition HP 84–1 and preliminarily concludes that the regulations for electrically-operated toys should be amended to generically exclude video games.

Comments should be submitted to the Commission's Office of the Secretary by December 22, 1992.

Effective Date

The Commission proposes that the amendments proposed in this notice shall be effective November 9, 1992.

List of Subjects

16 CFR Part 1500

Consumer protection, Hazardous materials, Hazardous substances, Imports, Infants and children, Labeling, Law enforcement, Toys.

16 CFR Part 1505

Consumer protection, Electronic products, Infants and children, Toys.

For the reasons given above, the Commission proposes to amend title 16 of the Code of Federal Regulations as follows:

Part 1500—[AMENDED]

1. The authority citation for part 1500 is revised to read as follows:

Authority: 15 U.S.C. 1261–1277, 2079.

Part 1505—[AMENDED]

1. The authority citation for part 1505 is revised to read as follows:

Authority: 15 U.S.C. 1261–1262, 2079.

§ 1505.1 [Amended]

2. Section 1505.1(a)(1) is amended by removing the second word "or" in the last sentence and by adding ", or videogames" before the period in the last sentence.

3. Section 1505.1(a) is amended by adding a new paragraph (a)(2) to read as follows:

(a) * * *

(2) The term "video games" means video game hardware systems, which are games that both produce a dynamic video image, either on a viewing screen that is part of the video game or, through connecting cables, on a television set, and that have some way to control the movement of at least some portion of the video image.

Dated: October 2, 1992.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

List of Relevant Documents

(Note: This list will not be published in the Code of Federal Regulations.)

1. 37 FR 1020 (January 21, 1972).

2. 38 FR 6138 (March 7, 1973).

3. Briefing package for the Commission, "Petition HP 84–1 on Video Games," dated August 22, 1988, with the following attachments:

TAB A. Letter from Gary J. Sharpiro, Staff Vice President, Government and Legal Affairs, Consumer Electronics Group, Electronic Industries Association re: "Petition for Exemption or Modification and Request for Stay of Enforcement Pending Decision on Petition," dated December 21, 1983 (HP 84–1).

TAB B. 1. Letter from J. Edward Day, Counsel for Consumer Electronics Group of the Electronics Industries Association, to James D. Grant, Deputy Commissioner, Food and Drug Administration dated February 17, 1972.

2. Letter from James D. Grant, Deputy Commissioner, Food and Drug Administration to J. Edward Day, dated March 2, 1972.

TAB C. 1. Memorandum from Carolyn Kennedy, Directorate for Economic Analysis to David W. Thome, Office of Program Management and Budget entitled "Video Game Petition, HP 84–1," dated June 24, 1988.

2. Memorandum from Carolyn Kennedy, Directorate for Economic Analysis to Carl W. Blechschmidt, Office of Program Management and Budget entitled "Video Games—Product Identification dated November 21, 1984.

TAB D. 1. Memorandum from Debbie Tinsworth, Directorate for epidemiology to David W. Thome, Office Program Management and Budget entitled "Video Game Petition (HP 84–1)," dated July 11, 1988.

2. Memorandum from William Rowe, Directorate for Epidemiology to Carole Shelton, Office of Program Management and Budget entitled "HP 84–1 Video Games: EPI Review of Incidents," dated February 25, 1988.

TAB E. Memorandum from John Preston, Directorate for Engineering Sciences to David W. Thome, Office of Program Management and Budget entitled "Petition HP 84–1; Electronic Video Games," dated July 1, 1988.

TAB F. Draft Proposed "Statement of Interpretation and Enforcement policy on Video Games."

4. Briefing package for the Commission, "Proposed Exemption of Video Games," dated August 11, 1992, with the following attachments:

TAB A. Draft Federal Register Notice, "Proposed Exemption of Video Games."

TAB B. Memorandum from Audrey E. J. Corley, EPHA, to Ron L. Medford, EXHR, entitled "Video Gram Exemption," dated October 15, 1991.

TAB C. 1. Memorandum from John Preston, ESMT, to David W. Thome, EXPB entitled "Petition HP 84–1 Electronic Video Games," dated July 1, 1988.

2. Memorandum from John Preston, ESMT, to David W. Thome, FO, entitled "Petition HP 84–1, Electronic Video Games," dated February 18, 1992.

TAB D. 1. Anthony C. Homan and Terrance R. Karels, Directorate for Economic Analysis, "Preliminary Regulatory Analyses, Economic and Environmental Assessments: Proposed Amendments to the Electrically Operated Toy Regulation," October, 1991.

2. Memorandum from Anthony C. Homan, to Bert G. Simson, EXHR, entitled "Market Sketch Update," dated October 16, 1991.

3. Memorandum from Anthony C. Homan, EXPA, to Elaine A. Tyrrell, EX–P, entitled Market Sketch Home Video Games," dated March 10, 1989.

[FR Doc. 92–24432 Filed 10–7–92; 8:45 am]

BILLING CODE 6355–01–M

DELAWARE RIVER BASIN COMMISSION

18 CFR Part 401

Proposed Amendments to Administrative Manual—Rules of Practice and Procedure; Public Hearings

AGENCY: Delaware River Basin Commission.

ACTION: Proposed rules and public hearing.

SUMMARY: Notice is hereby given that the Delaware River Basin Commission will hold a public hearing to receive comments on proposed amendments to its Rules of Practice and Procedure in relation to Commission review of electric generation or cogeneration projects. The hearing will be part of the Commission's regular business meeting which is open to the public.

The Commission's Rules of Practice and Procedure presently require Commission review and approval of all projects involving a withdrawal of surface or ground water whenever the daily average withdrawal during any month exceeds 100,000 gallons per day (gpd). Similarly, review and approval by the Commission of all discharges of wastewater to surface or ground waters having a design capacity of 50,000 gpd or more is also required. One or both of these requirements generally trigger Commission review of major electric generating projects. However, the Rules of Practice and Procedure do not specifically address similar electric generation or cogeneration projects if they elect to use an existing source of water supply and the Commission has been made aware of the fact that several such projects are under consideration. The depletive water use from these projects could have a substantial impact on the water resources of the Basin. Since the Commission as a matter of policy has imposed special requirements on new electric generating facilities regarding the replacement of depletive water use during critical hydrologic periods, the Commission is now proposing to amend its Rules of Practice and Procedure by the addition of a new category of projects for review under section 3.8 of the Compact: Electric generating or cogenerating facilities designed to

consumptively use in excess of 100,000 gpd of water during any 30-day period

The Commission recognizes the need to consider all large consumptive water uses and has asked staff to survey large water purveyors to obtain information on major depletive water users. Based on the results of that survey, the Commission may consider extending review authority to other large consumptive water users.

DATES: The public hearing will be part of the Commission's regular business meeting which is scheduled for Wednesday, December 9, 1992 beginning at 1 p.m. Persons wishing to testify at this hearing are requested to register with the Secretary prior to the hearing.

ADDRESSES: The hearing will be held at the Harbour League Club, 800 Hudson Square, Camden, New Jersey. Written comments should be submitted to Susan M. Weisman, Delaware River Basin Commission, P.O. Box 7360, West Trenton, New Jersey 08628.

FOR FURTHER INFORMATION CONTACT: Susan M. Weisman, Commission Secretary, Delaware River Basin Commission: Telephone (609) 883-9500 X203.

The subject of the hearing will be as follows:

Amendments to the Administrative Manual—Rules of Practice and Procedure.

List of Subjects in 18 CFR Part 401

Administrative practice and procedure, Environmental impact statements, Freedom of information, Water pollution control, Water resources.

These amendments become effective upon adoption of the final rule by the Commission.

It is proposed to amend part 401 as follows:

PART 401—[AMENDED]

1. The authority citation for part 401 continues to read as follows:

Authority: Delaware River Basin Compact, 75 Stat. 688.

§ 401.35 [Amended]

2. New § 401.35(b)(17) is added to read as follows:

(17) Electric generating or cogenerating facilities designed to consumptively use in excess of 100,000 gallons per day of water during any 30-day period.

Delaware River Basin Compact, 75 Stat. 688.

Dated: October 1, 1992.

Susan M. Weisman,

Secretary.

[FR Doc. 92-24449 Filed 10-7-92; 8:45 am]

BILLING CODE 6360-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[INTL-0018-92]

RIN 1545-AQ55

Earnings and Profits of Foreign Corporations; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains a correction to the notice of proposed rulemaking (INTL-0018-92), which was published on Wednesday, July 1, 1992 (57 FR 29246). The proposed regulations relate to computing the earnings and profits of foreign corporations.

FOR FURTHER INFORMATION CONTACT: Margaret Hogan (202-622-3870, not a toll free call).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking that is the subject of this correction contains proposed amendments to the Income Tax Regulations (26 CFR part 1) under sections 964 and 952 of the Internal Revenue Code of 1986.

Need for Correction

As published, the proposed regulations contain an error which may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the proposed regulations (INTL-0018-92), which was the subject of FR Doc. 92-15366, is corrected as follows:

Paragraph 1. On page 29247, column 3, in § 1.952-2(c)(2)(iv), line 6 and 7, the language "of paragraphs (c)(1)(ii)(B) and (c)(1)(iii)(D) of this section shall not" is corrected to read "of § 1.964-1(c)(1)(ii)(B) and (c)(1)(iii)(D) shall not".

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 92-24111 Filed 10-7-92; 8:45 am]

BILLING CODE 4830-01-M

Internal Revenue Service

26 CFR Part 301

[PS-7-92]

RIN 1545-AQ46

Continuity of Life—Limited Partnerships; Hearing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Cancellation of notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of cancellation of a public hearing on proposed regulations under section 7701 of the Internal Revenue Code relating to the classification of organizations for tax purposes. The proposed regulations clarify the rule in the regulations regarding the characteristic of continuity of life of a limited partnership.

DATES: The public hearing originally scheduled for Tuesday, October 20, 1992, beginning at 10 a.m. is cancelled.

FOR FURTHER INFORMATION CONTACT: Bob Boyer of the Regulations Unit, Assistant Chief Counsel (Corporate), 202-622-7190, (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations that amend 26 CFR part 301. The proposed regulations clarify the rule in 26 CFR 301.7701-2(b)(1) regarding the characteristic of continuity of life of a limited partnership. A notice appearing in the **Federal Register** for Wednesday, July 22, 1992, (57 FR 32472), announced that the public hearing on the proposed regulations would be held on Tuesday, October 20, 1992, beginning at 10 a.m. in the IRS Commissioner's Conference Room, room 3313, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

The public hearing scheduled for Tuesday, October 20, 1992, has been cancelled.

By direction of the Commissioner of Internal Revenue:

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 92-24552 Filed 10-7-92; 8:45 am]

BILLING CODE 4830-01-M

31 CFR Part 10

[IA-20-92]

RIN 1545-AQ57

Regulations Governing the Practice of Attorneys, Certified Public Accountants, Enrolled Agents, and Enrolled Actuaries Before the Internal Revenue Service

AGENCY: Office of the Secretary, Department of the Treasury.

ACTION: Notice of proposed rulemaking and withdrawal of proposed rule.

SUMMARY: This document proposes rules that would amend the regulations governing the practice of individuals before the Internal Revenue Service. These regulations would affect individuals who are eligible to practice before the Service. The proposed amendments generally would establish tax return preparation standards and prescribe the circumstances under which a practitioner could be disciplined for violating those standards; prohibit contingent fees for preparing tax returns; extend certain of the existing restrictions governing limited practice before the Service to all individuals who are eligible to engage in limited practice before the Service; establish expedited proceedings to temporarily suspend, in cases where certain determinations have been made by independent bodies, individuals from practice before the Service; and permit attorneys and certified public accountants in good standing to obtain or retain enrolled agent status.

DATES: Written comments must be received on or before November 16, 1992. The Treasury Department intends to hold a public hearing on these regulations on December 16, 1992. Outlines of oral comments from persons wishing to speak at the public hearing must be received by December 2, 1992.

ADDRESSES: Send comments and a request to speak at the public hearing to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R (IA-20-92), room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: David L. Meyer, Attorney-Advisor, Office of the Assistant Chief Counsel (Income Tax and Accounting) at 202-622-6232 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the regulations governing practice before the Internal Revenue Service. The regulations are in subtitle A, part 10, of title 31 of the Code of Federal Regulations and have been reprinted as Treasury Department Circular 230 ("Circular 230"). Circular 230 provides that attorneys, certified public accountants, enrolled agents and enrolled actuaries (collectively referred to as "practitioners") generally are entitled to engage in practice before the Service. Circular 230 also grants eligibility to practice in limited circumstances to individuals who are not "practitioners." In general, this eligibility arises from either an individual's legal relationship to the person represented, or the individuals' preparation of the return of the person represented. Circular 230 also provides that an individual may be suspended or disbarred for cause from practice before the Service.

Both Treasury and the Service encourage comments on ways to improve these proposed rules and reduce the burden of complying with these rules.

This document also withdraws proposed amendments to the regulations governing practice before the Service that were published in 1986. See 51 FR 29113 (August 14, 1986).

Explanation of Provisions

Return Preparation Standard and Related Disciplinary Standards

The proposed amendments would establish standards applicable to practitioners who advise clients to take return positions or who sign or otherwise prepare returns. These new standards would supplement the existing requirement in § 10.22 of Circular 230 that practitioners exercise due diligence in preparing, or assisting in the preparation of, tax returns and other documents relating to IRS matters. These proposed rules reflect recent efforts by professional organizations and others to develop rules addressing a practitioners' responsibilities in return preparation.

In 1985, the American Bar Association ("ABA"), in Formal Opinion 85-352, adopted a standard requiring that a return position be supported by a "realistic possibility of success if litigated." This standard replaced, in the context of return preparation and advice, the less stringent "reasonable basis" standard of ABA Formal Opinion 314 (1965). In 1986, following the adoption of Formal Opinion 85-352, Treasury issued a proposed amendment to Circular 230 that generally would have prohibited a practitioner from advising or preparing a return position unless the practitioner determined that the position would not subject the taxpayer to the substantial understatement penalty. See 51 FR 29113 (August 14, 1986). The proposed standard was criticized because of concern that imposition of a substantial understatement penalty would automatically lead to discipline under Circular 230 and because, under the law in effect at that time, the standard significantly restricted the types of authority on which a practitioner could rely in arriving at a return position. The 1986 proposed amendments to Circular 230 have not been finalized.

In 1987, the ABA and American Institute of Certified Public Accountants ("AICPA") responded to the proposed amendments by submitting proposals to the Service recommending that a realistic possibility standard for return preparation be incorporated in Circular 230. In 1988, the AICPA amended its Statements on Responsibilities in Tax Practice to replace its "reasonable support" standard with a "realistic possibility" standard that is similar, but not identical, to the standard for lawyers under ABA Formal Opinion 85-352.

In 1989, Congress revised the penalties for income tax return preparers in section 6694 of the Internal Revenue Code to generally reflect the revised ABA and AICPA return preparation standards. See H. Rep. No. 247, 101st Cong., 1st Sess. 1396 (1989) ("The committee has adopted this new standard because it generally reflects the professional conduct standards applicable to lawyers and to certified public accountants"). Final regulations under section 6694 were issued by Treasury on December 30, 1991.

In light of these developments, Treasury is withdrawing the 1986 proposed amendments to Circular 230 and is proposing a standard of conduct under § 10.34(a) that more closely reflects the realistic possibility standards adopted by professional organizations and the preparer penalty provisions of section 6694 of the Code and the regulations thereunder. Because Circular 230's role in regulating practitioner conduct differs from the role played by the ABA and AICPA guidelines and Internal Revenue Code penalties, the proposed amendments provide that a practitioner may be disciplined under Circular 230 only if a failure to comply with the realistic possibility standard is willful, reckless, or a result of gross incompetence. A pattern of conduct is a factor that will be taken into account in determining whether a practitioner acted recklessly or through gross incompetence. A practitioner will not be considered to

have acted willfully, recklessly, or through gross incompetence with respect to a return position if there was reasonable cause for the position and the practitioner acted in good faith. Because Circular 230 is intended to apply to all practitioners, the one-preparer-per-firm rule of § 1.6694-1(b)(1) of the preparer penalty regulations does not apply for purposes of 1034.

Under the new return preparer standard of conduct in § 10.34(a)(1), a practitioner may not advise a client to take a position on a return, or prepare the portion of a return on which a position is taken, unless (i) the practitioner determines that there is a realistic possibility of the position being sustained on its merits (the "realistic possibility standard"), or (ii) the position is not frivolous and the practitioner advises the client to adequately disclose the position. In addition, a practitioner may not sign a return as a preparer if the practitioner determines that the return contains a position that does not satisfy the realistic possibility standard, unless the position is not frivolous and is adequately disclosed to the Service. Section 10.34(a)(4) defines "realistic possibility" and "frivolous" for purposes of this section.

Proposed § 10.34(a)(2) generally requires a practitioner to advise a client of penalties reasonably likely to apply to a return position, of any opportunity to avoid the penalties by disclosure, and of the requirements for adequate disclosure. Proposed § 10.34(a)(3) generally permits a practitioner to rely without verification on information furnished by the client. However, the practitioner may not ignore the implications of the information and must make reasonable inquiries if the information appears incorrect, inconsistent or incomplete.

Fees

The proposed changes to § 10.28 generally prohibit a practitioner from charging a contingent fee for preparing a return of tax, including a claim for refund. A contingent fee includes a fee that is based on (i) a percentage of the refund shown on a return, (ii) a percentage of the taxes saved, or (iii) the specific result attained.

The proposed rule reflects Treasury's position that contingent fees should not be permitted for tax return preparation. Treasury is concerned that permitting contingent fees for tax return preparation would undermine voluntary compliance by encouraging return positions that exploit the audit selection process. An exception is made for refund claims that are filed in anticipation of litigation because these claims do not have the same potential for undermining voluntary compliance.

Restrictions on Individuals Engaging in Limited Practice

Section 10.7 of Circular 230 currently authorizes two categories of individuals who are not practitioners to engage in limited practice before the Service. The first category consists of non-practitioners who represent closely associated persons. This category includes, for example, an individual representing his or her employer or a trustee representing the trust. The second category consists of non-practitioners who represent taxpayers in connection with examinations of returns that the non-practitioners prepared.

Under § 10.7(a)(7), circular 230 only regulates and subjects to discipline individuals within the second category who engage in limited practice. Individuals in this category (i) must not be under suspension or disbarment from practice before the Service; (ii) may not engage in conduct that would justify suspending or disbarring a practitioner from practice before the Service; and (iii) must comply with such rules as the Director of Practice prescribes. These rules are currently in Rev. Proc. 81–38, 1981–2 C.B. 592.

Treasury believes it is in the interests of sound tax administration to require that all non-practitioners who engage in limited practice before the Service uphold the same standards of conduct as practitioners and be denied eligibility to engage in limited practice for violating those standards. Accordingly, the proposed amendments prohibit any non-practitioner from engaging in limited practice if he or she is under suspension or disbarment from practice before the Service, or if the non-practitioner engages in conduct that would justify suspending or disbarring a practitioner from practice before the Service. The proposed amendments do not extend the rules of Rev. Proc. 81–38 to individuals within the first category of limited practice because the revenue procedure only regulates representation before district offices.

Expedited Suspensions From Practice Before the Service in Certain Cases

Treasury believes current procedures under Circular 230 are inadequate to expeditiously discipline a practitioner who has been convicted of committing certain crimes or whose license to practice law or accounting has been suspended or revoked for cause, i.e., misconduct. Accordingly, the proposed regulations add § 10.53A to permit the Director of Practice, pursuant to the authority granted by 31 U.S.C. 330, to commence an expedited proceeding leading to a practitioner's suspension from practice before the Service in those instances in which an independent authority already has determined that the practitioner has engaged in serious misconduct.

Section 10.53A would apply only to a practitioner who, within 5 years of the commencement of the proceeding, (i) has been convicted of a crime under title 26 of the United States Code, such as willfully failing to file a tax return under section 7203, or a felony under title 18 of the United States Code involving dishonesty or breach of trust; or (ii) has had his or her license to practice law or accounting suspended or revoked for cause by the appropriate regulatory authority. A license will not be considered to have been revoked or suspended "for cause," for this purpose, if the revocation or suspension is due to a failure to pay licensing or other fees.

An attorney's or certified public accountant's right to practice before the Internal Revenue Service arises from his or her authority to practice as an attorney or certified public accountant. See 5 U.S.C. 500(b), (c); section 10.3(a), (b) of Circular 230. However, this right to practice does not impair Treasury's authority to discipline attorneys or certified public accountants. See 5 U.S.C. 500(d) and 31 U.S.C. 330.

An expedited proceeding under proposed § 10.53A commences with the filing of a complaint by the Director. If a practitioner so requests in a timely filed answer to the complaint, he or she is entitled to a conference with the Director on allegations in the complaint. Following such a conference (or at an earlier time if the practitioner does not request a conference or timely respond to the complaint), the Director may immediately suspend the practitioner from practice before the Service upon a finding that the practitioner has been convicted of one of the crimes specified in § 10.53A or has lost one or more of his or her professional licenses for cause. A practitioner retains the right to require the Director to institute a formal hearing before an administrative law judge pursuant to § 10.54 of Circular 230, which would be conducted *de novo*. An expedited suspension under § 10.53A remains in effect until it is lifted by the Director, or an administrative law judge or the Secretary of the Treasury pursuant to the formal proceeding.

Other Matters

Section 10.4(d) currently prohibits attorneys and certified public accountants from being enrolled. Section 10.3(a) and (b) invalidate an

enrollment card issued to an enrolled agent who subsequently becomes an attorney or certified public accountant.

It is believed that these rules are unfair to individuals who retire from the practice of law or accounting but nonetheless desire to continue to practice before the Service based on enrollment or who wish enrollment for other reasons. Therefore, the proposed rules would repeal § 10.4(d) and the portion of §§ 10.3(a) and (b) that invalidates prior enrollments. Attorneys and certified public accountants who desire enrolled agent status and who previously did not have such status must comply with the requirements of the regulations governing eligibility for enrollment. For example, individuals who do not qualify for enrolled status on the basis of their prior employment with the Service must pass the enrollment examination administered by the Director of Practice.

PROPOSED EFFECTIVE DATE: These regulations are proposed to be effective [on the date final regulations are published in the **Federal Register**].

Special Analyses

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

Comments and Public Hearing

The Treasury Department intends to hold a public hearing on these regulations on December 16, 1992. Before adopting these proposed regulations, consideration will be given to any written comments that are submitted timely (preferably an original and eight copies) to the Treasury Department. All comments will be available for public inspection and copying.

Drafting Information

The principal author of these proposed regulations is David L. Meyer, Office of Chief Counsel, Income Tax & Accounting. However, personnel from other offices of the Treasury Department and the Internal Revenue Service participated in their development.

List of Subjects in 31 CFR part 10

Administrative practice and procedure, Lawyers, Accountants, Enrolled agents, Enrolled actuaries, Appraisers

Proposed Amendments to the Regulations

For the reasons set forth in the preamble, 31 CFR part 10 is proposed to be amended as follows:

PART 10—PRACTICE BEFORE THE INTERNAL REVENUE SERVICE

Paragraph 1. The authority citation for subtitle A, part 10 continues to read as follows:

Authority: Sec. 3, 23 Stat. 258, secs. 2–12, 60 Stat. 237 *et. seq.*; 5 U.S.C. 301, 500, 551–559; 31 U.S.C. 1026; Reorg. Plan No. 26 of 1950, 15 FR 4935, 64 Stat. 1280, 3 CFR, 1949–1953 Comp., P. 1017.

Par. 2. Section 10.0 is revised to read as follows:

§ 10.0 Scope of part.

This part contains rules governing the recognition of attorneys, certified public accountants, enrolled agents, and other persons representing clients before the Internal Revenue Service. Subpart A of this part sets forth rules relating to authority to practice before the Internal Revenue Service; subpart B of this part prescribes the duties and restrictions relating to such practice; subpart C of this part contains rules relating to disciplinary proceedings; subpart D of this part contains rules applicable to disqualification of appraisers; and Subpart E of this part contains general provisions, including provision relating to the availability of official records.

Par. 3. Section 10.2 is revised to read as follows:

§ 10.2 Definitions.

As used in this part, except where the context clearly indicates otherwise:

(a) *Attorney* means any person who is a member in good standing of the bar of the highest court of any State, possession, territory, Commonwealth, or the District of Columbia.

(b) *Certified public accountant* means any person who is duly qualified to practice as a certified public accountant in any State, possession, territory, Commonwealth, or the District of Columbia.

(c) *Commission* refers to the Commissioner of Internal Revenue.

(d) *Director* refers to the Director of Practice.

(e) *Practice before the Internal Revenue Service* comprehends all matters connected with a presentation to the Internal Revenue Service or any of its officers or employees relating to a client's rights, privileges, or liabilities under laws or regulations administered by the Internal Revenue Service. Such presentations include preparing and filing necessary documents, corresponding and communicating with the Internal Revenue Service, and representing a client at conferences, hearings, and meetings.

(f) *Practitioner* means any individual described in § 10.3 (a), (b), (c), or (d) of this part.

(g) A *return* of tax includes a claim for refund of tax.

(h) *Service* means the Internal Revenue Service.

Par. 4. Section 10.3 is amended by revising paragraphs (a), (b), (e) and (f) to read as follows:

§ 10.3 Who may practice.

(a) *Attorneys.* Any attorney who is not currently under suspension or disbarment from practice before the Internal Revenue Service may practice before the Service upon filing with the Service a written declaration that he or she is currently qualified as an attorney and is authorized to represent the particular party on whose behalf he or she acts.

(b) *Certified public accountants.* Any certified public accountant who is not currently under suspension or disbarment from practice before the Internal Revenue Service may practice before the Service upon filing with the Service a written declaration that he or she is currently qualified as a certified public accountant and is authorized to represent the particular party on whose behalf he or she acts.

* * * * *

(e) *Others.* Any individual qualifying under § 10.5(c) or § 10.7 is eligible to practice before the Internal Revenue Service to the Extent provided in those sections.

(f) *Government officers and employees, and others.* An individual, including any officer or employee of the executive, legislative, or judicial branch of the United States Government; officer or employee of the District of Columbia; Member of Congress; or Resident Commissioner, may not practice before the Service if such practice would violate 18 U.S.C. 203 or 205.

* * * * *

Par. 5. Section 10.3 is amended by removing the footnote 1, reference from paragraphs (a) and (b) and footnote 1.

Par. 6. Section 10.4 is amended by removing paragraph (d).

Par. 7. Section 10.7 is revised to read as follows:

§ 10.7 Representing oneself; participating in rulemaking; limited practice; special appearances; and return preparation.

(a) *Representing oneself.* Individuals may appear on their own behalf before

the Internal Revenue Service provided they present satisfactory identification.

(b) *Participating in rulemaking.* Individuals may participate in rulemaking as provided by the Administrative Procedure Act. See 5 U.S.C. 553.

(c) *Limited practice*—(1) *In general.* Subject to the limitations in paragraph (c)(2) of this section, an individual who is not a practitioner may represent a taxpayer before the Internal Revenue Service in the circumstances described in this paragraph (c), even if the taxpayer is not present, provided the individual presents satisfactory identification and proof of this or her authority to represent the taxpayer:

(i) An individual may represent a member of his or her immediate family.

(ii) A regular full-time employee of an individual employer may represent the employer.

(iii) A general partner or a regular full-time employee of a partnership may represent the partnership.

(iv) A bona fide officer or a regular full-time employee of a corporation (including a parent, subsidiary, or other affiliated corporation), association, or organized group may represent the corporation, association, or organized group.

(v) A trustee, receiver, guardian, personal representative, administrator, executor, or regular full-time employee of a trust, receivership, guardianship, or estate may represent the trust, receivership, guardianship, or estate.

(vi) An officer or a regular employee of a governmental unit, agency, or authority may represent the governmental unit, agency, or authority in the course of his or her official duties.

(vii) An individual may represent an individual or entity outside of the United States before personnel of the Internal Revenue Service:

(viii) An individual who prepares and signs a taxpayer's return on behalf of the taxpayer, or who prepares a return but is not required (by the instructions or regulations) to sign it, may represent the taxpayer before officers and employees of the Examination Division of the Internal Revenue Service with respect to the tax liability of the taxpayer for the taxable year or period covered by that return.

(2) *Limitations.*

(i) An individual who is under suspension or disbarment from practice before the Internal Revenue Service may not engage in limited practice before the Service under § 10.7(c)(1).

(ii) The Director of Practice, after notice and opportunity for a conference, may deny eligibility to engage in limited practice before the Internal Revenue Service under § 10.7(c)(1) to any individual who has engaged in conduct that would justify suspending or disbarring a practitioner from practice before the Service.

(iii) An individual who represents a taxpayer under the authority of § 10.7(c)(1)(viii) is subject to such rules of general applicability regarding standards of conduct, the extent of his or her authority, and other matters as the Director prescribes.

(d) *Special appearances.* The Director of Practice, subject to such conditions as he or she deems appropriate, may authorize an individual who is not otherwise eligible to practice before the Service to represent another person in a particular matter.

(e) *Preparing tax returns and furnishing information.* An individual may prepare a tax return, appear as a witness for the taxpayer before the Internal Revenue Service, or furnish information at the request of the Service or any of its officers or employees.

Par. 8. Section 10.26(a)(4) is revised to read as follows:

§ 10.26 Practice by former Government employees, their partners and their associates.

(a) * * *

(4) *Practitioner* includes any individual described in § 10.3(e).

* * * * *

Par. 9. Section 10.28 is revised to read as follows:

§ 10.28 Fees.

(a) A practitioner may not charge an unconscionable fee for representing a client in a matter before the Internal Revenue Service.

(b) A practitioner may not charge a contingent fee for preparing a return, except as provided in the following sentence. A practitioner may charge a contingent fee for preparing a claim for refund if the practitioner reasonably anticipates, at the time the claim is filed, that the claim will be denied by the Service and subsequently litigated by the client. A contingent fee includes a fee that is based on a percentage of the refund shown on a return or a percentage of the taxes saved, or that depends on the specific result attained.

Par. 10. Section 10.33(a)(1) is revised to read as follows:

§ 10.33 Tax shelter opinions.

* * * * *

(c) * * *

(1) *Practitioner* includes any individual described in § 10.3(e).

* * * * *

Par. 11. Section 10.34 is added to read as follows:

§ 10.34 Standards for advising with respect to tax return positions and for preparing or signing returns.

(a) *Standard of conduct*—(1) *Realistic possibility standard.* A practitioner may not sign a return as a preparer if the practitioner determines that the return contains a position that does not satisfy the realistic possibility standard, unless the position is not frivolous and is adequately disclosed to the Service. A practitioner may not advise a client to take a position on a return, or prepare the portion of a return on which a position is taken, unless—

(i) The practitioner determines that there is a realistic possibility of the position being sustained on its merits (the "realistic possibility standard"); or

(ii) The position is not frivolous and the practitioner advises the client to adequately disclose the position.

(2) *Advising clients on potential penalties.* A practitioner advising a client to take a position on a return, or preparing or signing a return as a preparer, must inform the client of the penalties reasonably likely to apply to the client with respect to the position, of the opportunity to avoid any such penalty by disclosure, if relevant, and of the requirements for adequate disclosure.

(3) *Relying on information furnished by clients.* A practitioner advising a client to take a position on a return, or preparing or signing a return as a preparer, generally may rely in good faith without verification upon information furnished by the client. However, the practitioner may not ignore the implications of information furnished to, or actually known by, the practitioner, and must make reasonable inquiries if the information as furnished appears to be incorrect, inconsistent, or incomplete.

(4) *Definitions.* For purposes of this section:

(i) *Realistic possibility.* A position is considered to have a realistic possibility of being sustained on its merits if a reasonable and well-informed analysis by a person knowledgeable in the tax law would lead such a person to conclude that the position has approximately a one in three, or greater, likelihood of being sustained on its merits. The authorities described in 26 CFR 1.6662-4(d)(3)(iii) of the substantial understatement penalty regulations may be taken into account for purposes of this analysis. The possibility that a position will not be challenged by the Service (e.g., because the taxpayer's return may not be audited or because the issue may not be raised on audit) may not be taken into account.

(ii) *Frivolous.* A position is frivolous if it is patently improper.

(b) *Standard of discipline.* As provided in § 10.52, only violations of this section that are willful, reckless, or a result of gross incompetence will subject a practitioner to suspension or disbarment from practice before the Service.

Par. 12. Section 10.50 is revised to read as follows:

§ 10.50 Authority to disbar or suspend.

Pursuant to 31 U.S.C. 330(b), the Secretary of the Treasury after notice and an opportunity for a proceeding, may suspend or disbar any practitioner from practice before the Internal Revenue Service. The Secretary may take such action against any practitioner who is shown to be incompetent or disreputable, who refuses to comply with any regulation in this part, or who, with intent to defraud, willfully and knowingly misleads or threatens a client or prospective client.

Par. 13. Section 10.51, paragraph (j) is amended by removing the third sentence and adding two sentences in its place to read as follows:

§ 10.51 Disreputable conduct.

* * * * *

(j) * * * For purposes of this paragraph, reckless conduct is a highly unreasonable omission or misrepresentation involving an extreme departure from the standards of ordinary care that a practitioner should observe under the circumstances. A pattern of conduct is a factor that will be taken into account in determining whether a practitioner acted knowingly, recklessly, or through gross incompetence. * * *

Par. 14. Section 10.52 is revised to read as follows:

§ 10.52 Violation of regulations.

A practitioner may be disbarred or suspended from practice before the Internal Revenue Service for any of the following:

(a) Willfully violating any of the regulations contained in this part.

(b) Recklessly or through gross incompetence (within the meaning of § 10.51(j)) violating § 10.33 or § 10.34 of this part.

Par. 15. Section 10.53A is added to read as follows:

§ 10.53A Expedited suspension upon criminal conviction or loss of license for cause.

(a) *When applicable.* Whenever the Director has reason to believe that a practitioner is described in paragraph (b) of this section, the Director may institute a proceeding under this section to suspend the practitioner from practice before the Service.

(b) *To whom applicable.* This section applies to any practitioner who, within 5 years of the date a complaint instituting a proceeding under this section is served—

(1) Has had his or her license to practice as an attorney, certified public accountant, or actuary suspended or revoked for cause by any authority or court, agency, body, or board described in § 10.51(g); or

(2) Has been convicted on any crime under title 26 of the United States Code, or a felony under title 18 of the United States Code involving dishonesty or breach of trust.

(c) *Instituting a proceeding.* A proceeding under this section will be instituted by a complaint that names the respondent, is signed by the Director of Practice, is filed in the Director's office, and is served according to the rules set forth in § 10.57(a). The complaint must give a plain and concise description of the allegations that constitute the basis for the proceeding. The complaint, or a separate paper attached to the complaint, must notify the respondent:

(1) Of the place and due date for filing an answer;

(2) That a decision by default may be rendered if the respondent fails to file an answer as required;

(3) That the respondent may request a conference with the Director of Practice to address the merits of the complaint and that any such request must be made in the answer; and

(4) That the respondent may be suspended either immediately following the expiration of the period by which an answer must be filed or, if a conference is requested, immediately following the conference.

(d) *Answer.* The answer to a complaint described in this section must be filed no later than 21 calendar days following the date the complaint is served, unless the Director of Practice extends the time for filing. The answer must be filed in accordance with the rules set forth in § 10.58, except as otherwise provided in this section. A respondent is entitled to a conference with the Director only if the conference is requested in a timely filed answer. If a request for a conference is not made in the answer or the answer is not timely filed, the respondent will be deemed to have waived his or her right to a conference and the Director may suspend such respondent at any time following the date on which the answer was due.

(e) *Conference.* The Director or his or her designee will preside at a conference described in this section. The conference will be held at a place and time selected by the Director, but no sooner than 30 calendar days after the date the complaint is served on the respondent. An authorized representative may represent the respondent at the conference. Following the conference, upon a finding that the respondent is described in paragraph (b) of this section, or upon the respondent's failure to appear at the conference either personally or through an authorized representative, the Director may immediately suspend the respondent from practice before the Service.

(f) *Duration of suspension.* A suspension under this section will commence on the date that written notice of the suspension is issued. A practitioner's suspension will remain effective until the earlier of the following:

(1) The Director of Practice lifts the suspension after determining that the practitioner is no longer described in paragraph (b) of this section or for any other reason; or

(2) The suspension is lifted by an Administrative Law Judge or the Secretary of the Treasury in a proceeding referred to in paragraph (g) of this section and instituted under § 10.54.

(g) *Proceeding instituted under § 10.54.* If the Director suspends a practitioner under this § 10.53A, the practitioner may ask the Director to issue a complaint under § 10.54. The request must be made in writing within 2 years from the date on which the practitioner's suspension commences. The Director must issue a complaint requested under this paragraph within 30 calendar days of receiving the request.

Par. 16. Section 10.65(a) is revised to read as follows:

§ 10.65 Hearings.

(a) *In general.* An Administrative Law Judge will preside at the hearing on a complaint furnished under § 10.54 for the disbarment or suspension of a practitioner. Hearings will be stenographically recorded and transcribed and the testimony of witnesses will be taken under oath or affirmation. Hearings will be conducted pursuant to 5 U.S.C. 556. A hearing in a proceeding requested under § 10.53A(g) will be conducted *de novo.*

* * * * *

Par. 17. Subpart E of part 10 is amended by removing § 10.99.

Jeanne S. Archibald,

General Counsel.

[FR Doc. 92-24347 Filed 10-7-92; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD8-92-27]

Drawbridge Operation Regulations; Bayou Dularge, Louisiana

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of the Terrebonne Parish School Board and the Louisiana Department of Transportation and Development (LDOTD), the Coast Guard is considering a change to the regulation governing the operation of the State Route 315 Bayou Dularge bridge across the Gulf Intracoastal Waterway, mile 59.9, at Houma, Terrebonne Parish, Louisiana. The requested regulation would permit the draw to be closed to navigation an additional 15 minutes, at the beginning of the morning regulated period. Presently, the bridge is closed to navigation from 7 a.m. to 8:30 a.m. and from 4:30 p.m. to 6 p.m., Monday through Friday except holidays. The primary purpose of this 15-minute additional regulation is to provide school bus traffic undelayed use of the bridge during the school year. Public vessels of the United States and vessels in distress would continue to be passed at any time.

This action will accommodate the needs of local school bus traffic and rush hour vehicular traffic, while still providing for the reasonable needs of navigation.

DATES: Comments must be received on or before November 23, 1992.

ADDRESSES: Comments should be mailed to Commander (ob), Eighth Coast Guard District, 501 Magazine Street, New Orleans, Louisiana 70130-3396. The comments and other materials referenced in this notice will be available for inspection and copying in room 1313 at this address. Normal office hours are between 8 a.m. and 3:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Mr. John Wachter, Bridge Administration Branch, at the address given above, telephone (504) 589-2965.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, comments, data or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, Eighth Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulation may be changed in the light of comments received.

Drafing Information

The drafters of this regulation are Mr. John Wachter, project officer, and LT J.A. Wilson, project attorney.

Discussion of Proposed Regulation

Vertical clearance of the bridge in the closed to navigation position is 40 feet above high tide and 43 feet above low tide. Navigation through the bridge consists of barge tows, commercial fishing boats, and recreational craft.

Considering the very minimal amount of additional time that is involved in this proposed amendment to the drawbridge regulation, and they very significant amount of benefit to the Terrebonne Parish School System, the Coast Guard feels that vessel operators should be able to adjust the speed of their vessels to accommodate this additional 15 minute closure with little or no expense or inconvenience to themselves.

Federalism

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

Economic Assessment and Certification

This proposed regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034: February 26, 1979).

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. The basis for this conclusion is that during the proposed regulated periods there will be very little inconvenience to vessels using the waterway. In addition, mariners requiring the bridge openings are repeat users of the waterway and scheduling their arrivals to avoid the additional regulated period should involve little or no expense to them. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

Environment

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 document.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed 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. 499; 49 CFR 1.46; 33 CFR 1.05-1(g).

2. Section 117.451 is amended by revising paragraph (c), by redesignating existing paragraphs (d) and (e) as paragraphs (e) and (f) respectively, and by adding new paragraph (d) as follows:

§ 117.451 Gulf Intracoastal Waterway.

* * * * *

(c) The draws of the East Main Street bridge, mile 57.5, and East Park Avenue bridge, mile 57.6, at Houma, shall open on signal; except that, the draws need not be opened for the passage of vessels Monday through Friday except holidays from 7 a.m. to 8:30 a.m. and from 4:30 p.m. to 6 p.m.

(d) The draw of the Bayou Dularge bridge, mile 59.9, at Houma, shall open on signal; except that, the draw need not be opened for the passage of vessels Monday through Friday except holidays from 6:45 a.m. to 8:30 a.m. and from 4:30 p.m. to 6 p.m.

* * * * *

Dated: September 23, 1992.

J.C. Card,

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

[FR Doc. 92-24564 Filed 10-7-92; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 431, 440, 442, 488, 489, and 498

[HSQ-139-P]

RIN: 0938-AC88

Medicare and Medicaid Programs; Revised Effective Date of Medicare/Medicaid Provider Agreement and Supplier Participation

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

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish uniform criteria for determining the effective date of participation for all Medicare and Medicaid providers and Medicare suppliers. It also would specify that those dissatisfied with a decision on their effective date of participation under Medicare are entitled to a Medicare hearing on the decision.

DATES: To assure consideration, comments must be mailed or delivered to the appropriate address, as provided below, and must be received by 5 p.m. on December 7, 1992.

ADDRESSES: Address comments in writing to the following address:

Health Care Financing Administration, Department of Health and Human Services, Attention: HSQ-139-P, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 306-G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201 or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

Please address a copy of comments on information collection requirements to:

Office of Management and Budget, Office of Information and Regulatory Affairs, Room 3001, New Executive Office Building, Washington, DC 20503, Attention: Allison Herron Eydt.

Due to staffing and resource limitations, we cannot accept facsimile transmissions. In commenting, please refer to file code HSQ-139-P. Comments received timely will be available for public inspection as they are received, beginning approximately three weeks after publication in room 309-G of the Department's offices at 200 Independence Ave., SW., Washington, DC 20201, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: 202-245-7890).

FOR FURTHER INFORMATION CONTACT: Irene Gibson, (410) 966-6768.

SUPPLEMENTARY INFORMATION:

I. Background

Under section 1866 of the Social Security Act (the Act), a health care facility seeking to participate in the Medicare program must enter into an agreement with the Secretary. As an additional condition for eligibility for Medicare payment, the facility is surveyed and certified by a State under section 1864 of the Act (or accreditation organization pursuant to section 1865 of the Act) to determine whether the facility meets the statutory definition of a Medicare provider or supplier. Rules relating to these requirements are in 42 CFR parts 488 and 489. Similar requirements apply for provider participation under the Medicare program (see sections 1902(a)(27), 1902(a)(33)(B), and 1905 of the Act, and 42 CFR part 442). This proposed rule concerns one aspect of the participation approval process—the determination of the effective date of a provider's or supplier's participation in the Medicare or Medicaid programs.

Under the general authority at section 1866 of the Act for Medicare, and section 1902(a)(4) and (a)(27) for Medicaid, and our regulations at 42 CFR 442.12(a) and 442.30, Federal payments may not be made for services furnished prior to the effective date of a provider's Medicare or Medicaid provider agreement. Moreover, § 442.13 specifies that a provider agreement may not be effective before the provider has met all Federal participation requirements or before the date it has provided an acceptable plan of correction to HCFA or the State to meet all Federal requirements. All health care facilities except Medicare skilled nursing facilities (SNFs) and Medical nursing facilities (NFs), must meet all conditions of participation (CoPs) in order to meet the statutory definition of a provider. Until very recently this was also the case with nursing homes. However, the legislative history of the Omnibus Budget Reconciliation Act of 1987 (OBRA '87), Public Law 100-203, revealed that Congress intended that HCFA eliminate CoPs for nursing homes.

The committee amendment would establish "requirements" of participation for nursing facilities. In using the term "requirements" the committee specifically intends that the Secretary discard the existing regulatory practices and conventions associated with the terms "conditions" and "standards" and develop a regulatory approach that will assure the clear articulation and enforcement of the requirements in the committee amendment.

H. Rep. 391, 100th Cong., 1st Sess. 453.

Therefore, existing Department policy, as embodied in regulations at § 442.13 and § 489.13, allows provider agreements to be effective as of the date of compliance at the CoP level or with Level A requirements for nursing homes. These provider agreements could be effective even if there are deficiencies below the CoP level or below the Level A requirements for nursing homes, as long as the facility submits an approved plan of correction to HCFA or to the State for these deficiencies.

The Medicaid rules at § 442.13 apply to nursing and intermediate care facilities for the mentally retarded. Although we have been applying similar policies to other Medicaid providers (such as hospitals and home health agencies), our regulations do not contain effective date regulatory provisions for these other Medicaid providers. Similarly, the Medicare provision at § 489.13 applies to Medicare providers, i.e., hospitals, skilled nursing facilities, home health agencies, comprehensive outpatient rehabilitation facilities, hospices and certain providers of outpatient physical therapy and speech pathology services. There is no corresponding effective date regulatory provision for suppliers. However, for purposes of consistency, ease of administering each program, and to protect the health and safety of beneficiaries and recipients, we have extended in our current procedure manuals and practice the same effective date provisions to all types of Medicare and Medicaid providers. Additionally, existing Medicare and Medicaid regulatory provisions do not address the effective date of participation for those providers and suppliers who are deemed to meet the conditions or requirements by an accreditation organization.

The statute at section 1866(h) for Medicare and the regulations at 42 CFR part 498 provide that an institution or agency dissatisfied with a determination that it is not a provider (and, under the regulations, a supplier) of services is entitled to an administrative law judge (ALJ) hearing on the issue. However, because an effective date determination is not specified as an appealable issue under § 498.3(b), institutions or agencies are not consistently granted ALJ hearings on this issue.

II. Provisions of the Proposed Regulations

We propose to promulgate uniform rules on establishing the effective date

of participation for all providers and suppliers.

Under current rules at § 442.13 for Medicaid NFs and ICFs/MR, and § 489.10 and § 489.13 for Medicare providers, provider agreements are made effective upon the completion of the on-site health and safety certification survey, if all Federal requirements are met on that date. Otherwise, the provider agreement is made effective upon the date on which (1) HCFA for Medicare, or the State survey agency for Medicaid, determines that all Federal requirements are met; or (2) if the facility meets all CoPs or Level A requirements for Medicare SNFs and Medicaid NFs, as of the date the facility submits a plan of correction to meet all lower level Federal requirements or waiver request that is acceptable to HCFA or the State survey agency for deficiencies below the CoP level or below Level A for SNFs and NFs. (Presently, § 489.10 requires that prospective providers meet the CoPs or requirements for SNFs, thereby limiting the use of plans of correction to facilities having deficiencies below the CoP level or below Level A requirements.)

We would revise § 489.13 to establish a requirement that all Medicare suppliers as well as all providers be subject to consistent effective date requirements. (No corresponding changes are needed in Part 442 because the Medicaid program recognizes only providers, not suppliers. However, in amending § 489.13 to apply the effective date provisions to suppliers, we would revise the overall language to clarify the intent of the policy with regard to effective dates in conjunction with plans of correction. We would make corresponding changes to § 442.13, to clarify Medicaid policies in this regard, as well.)

In addition, we would revise § 489.13 to establish rules to govern providers/suppliers that apply to participate in Medicare after they have been deemed to meet Federal requirements, including Life Safety Code Requirements, by a HCFA-approved accreditation organization. We would add a new paragraph to state that when a provider/supplier does not require an onsite survey by a State survey agency because it is deemed to meet Federal requirements by an accreditation organization, the effective date of the provider agreement or approval of a supplier's participation is the date on which the provider or supplier makes its initial request to HCFA to participate in the Medicare program. However, the effective date cannot be before the date on which the accreditation organization conducts its initial onsite survey and certifies the provider or supplier as meeting its accreditation requirements, nor before the date HCFA grants deeming authority to the accreditation organization conducting the survey of the provider or supplier. For those accredited providers or suppliers that are required to meet special requirements for which an accreditation organization is not authorized to grant deemed status, the effective date of the provider agreement or approval of a supplier's participation is the date on which all of the Federal requirements are met, including the special requirements. (Likewise, we would make the corresponding changes to § 442.13 to clarify Medicaid policies in this regard.) To reflect the nomenclature changes made by section 4211(a) of OBRA '87, we would also make conforming changes to the title of part 442 affected by this proposed rule to substitute the term "NF" for "SNF" and "ICF". Part 442 would now be entitled "Part 442—Standards for Payment for Nursing Facilities and Intermediate Care Facilities for the Mentally Retarded".

We would add a new paragraph (e)(3) of § 431.610, Relations with Standard Setting and Survey Agencies, to clarify that the Medicaid State plan specify that the State survey agency is responsible for recommending the effective date of an agreement for a provider as provided under § 442.13. We believe that this revision would be appropriate since the State survey agency usually has the initial responsibility for conducting the survey and certifying compliance with Federal requirements. Because the State survey agency, through its onsite survey, is aware of the date it verified that the entity complied with the Federal requirements, it is appropriate that it also recommend this date as the effective date of a provider agreement.

We would establish a new § 440.3, Effective Dates of Provider Agreements, that would specify that the effective date of provider agreements of all types of Medicaid providers would be determined in accordance with procedures at § 442.13, which currently specify effective date policies for Medicaid only nursing homes and ICFs/MR.

We would add a new paragraph (d) to § 488.11, Survey Agency Functions, to require that State and local agencies—that have agreements under section 1864(a) of the Act recommend an effective date of a Medicare agreement for a provider or Medicare participation for a supplier using the requirements of revised § 489.13.

We propose to revise § 498.3(b) by adding a new paragraph (12) to clarify that we consider effective date decisions to be initial determinations and, hence, a proper subject for Medicare hearings. This would specifically provide the appeal rights specified in §§ 498.3(b) (1) and (4) and 498.5 (a) and (d) to prospective providers and suppliers who are dissatisfied with a finding of noncompliance with a condition of participation or coverage, or dissatisfied with a finding of noncompliance with a Level A requirement (in the case of SNFs or NFs) as of the date of the initial survey. However, prospective providers and suppliers would not be entitled to an appeal based on the contention that the survey should have been conducted earlier than it was. This change is included at new § 498.3(d)(10. For unaccredited providers/suppliers, allegations that the effective date of participation should be earlier than the date the onsite survey by the State survey agency is completed (including the Life Safety Code survey), or earlier than the date on which a plan of correction or waiver request acceptable to HCFA or the State is submitted, would continue to be governed by § 489.13 and would not form a proper basis for appeal under § 498.3.

The proposed change to § 498.3(b) is in accord with an Appeals Council decision in the case of *Citizens General Hospital Home Health Agency* v. *the Health Care Financing Administration*, No. HIP 000–61–0031 (July 23, 1987), which held that a decision that a provider or supplier does not meet the Medicare conditions of participation or coverage on the date of its initial certification survey, even though it was found to meet Medicare requirements at a later date, constitutes an appealable decision.

In addition, we propose to revise § 498.3 by removing paragraph (d)(3), under which HCFA can refuse to enter into an agreement with a prospective provider adjudged bankrupt or insolvent under Federal or State law, or because insolvency or bankruptcy proceedings are pending. Paragraph (d)(3) is no longer applicable, pursuant to the Revised Bankruptcy Code, 11 U.S.C. § 525, which prohibits HCFA from denying participation of a provider or supplier solely because of bankruptcy or insolvency. This change is necessary to conform to the revision of § 489.12 that was effective January 27, 1989 (54 FR 4023).

III. Regulatory Impact Statement

Executive Order (E.O.) 12291 requires us to prepare and publish an initial regulatory impact analysis for any proposed regulation that meets one of the E.O. criteria for a "major rule"; that is, that would be likely to result in:

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In addition, we generally prepare an initial regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) [5 U.S.C. 601 through 612), unless the Secretary certifies that a proposed regulation would not have significant economic impact on a substantial number of small entities. For purposes of the RFA, we treat all providers and suppliers as small entities.

We believe that the impact of this proposed regulation would be minimal. Our existing regulations on the determination of effective dates provide that an agreement will be effective on the date the onsite survey is completed, if all Federal health and safety requirements are met on that date. Otherwise, if the prospective provider fails to meet all of the requirements as of the date of survey, the agreement is effective on the earlier of the following dates: the date it actually does meet all of the requirements; or the date it meets all conditions of participation, level A requirements or conditions for coverage and submits an acceptable correction plan for any deficiencies, or an approvable waiver request, or both to HCFA or the State agency. Our current regulations do not address the determination of effective dates for Medicare suppliers, Medicaid providers (other than nursing facilities and intermediate care facilities for the mentally retarded), and finally, providers/suppliers that are deemed to meet Federal requirements by an accreditation organization. In practice, however, we have used, for the most part, the policy discussed above for determining effective dates in most of those situations not addressed in the regulations. This proposed rule would codify in regulations uniform criteria for establishing the effective date of participation for every type of Medicare provider and supplier and Medicaid provider.

Existing regulations do not address the appeal rights of a provider or supplier who disagrees with the determination of an effective date. Therefore, this proposed regulation would establish an effective date determination as an appealable issue.

We do not anticipate any substantial increase in Medicare/Medicaid expenditures since, in practice, the procedures for determining effective dates generally will not change. Although the right to an appeal of a determination of an effective date is new policy, we do not anticipate a significant increase in the number of hearings. The current Federal regulations provide appeal rights for a prospective provider or supplier who is denied participation in the Medicare program. State regulations may provide for similar appeal mechanisms for Medicaid denials. Usually, when a determination is made to deny a prospective provider's or prospective supplier's participation, it is based on the prospective provider's or supplier's noncompliance with a condition of participation, level A requirement, or condition for coverage. We expect effective date hearings to focus on the same noncompliance issues, and do not anticipate that facilities will appeal both an initial denial and a subsequent effective date determination. The new hearings provided for by this proposed regulation will probably only result in an increased hearing workload in those situations where a facility disagrees with the date that HCFA or the State determined that compliance was achieved or refuses to submit a plan of correction for lower level deficiencies. We do not believe that the number of providers and suppliers that will exercise this particular hearing option will be great. For these reasons, we believe that the impact on both HCFA and facilities is negligible and consequently, a regulatory impact analysis is not required. Further, we have determined, and the Secretary certifies, that this proposed rule would not have a significant economic impact on a substantial number of small entities, and we have, therefore, not prepared a Regulatory Flexibility Act Analysis.

Also, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis for any proposed rule that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 50 beds located outside a metropolitan statistical area. We have determined, and the Secretary certifies, that this proposed rule would not have a significant impact on the operations of a substantial number of small rural hospitals.

IV. Paperwork Reduction Act

This proposed rule does not impose any information collection requirements subject to the Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1980, as amended.

V. Response to Comments

Because of the large number of pieces of correspondence we normally receive on a proposed rule, we are not able to acknowledge or respond to them individually. However, in preparing the final rule, we will consider all timely comments contained in written correspondence that we receive by the date specified in the "**DATE**" section of this preamble, and will respond to the comments in the preamble to that rule.

List of Subjects

42 CFR Part 431

Grant programs-health, Health facilities, Medicaid, Privacy, Reporting and recordkeeping requirements.

42 CFR Part 440

Health facilities, requirements and limits applicable to Medicaid services.

42 CFR Part 442

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

42 CFR Part 488

Health facilities, Survey and certification, Forms and quidelines

42 CFR Part 489

Health facilities, Medicare

42 CFR Part 498

Administrative practice and procedure, Appeals, Medicare Practitioners, providers, and suppliers

Title 42—Public Health

CHAPTER IV—HEALTH CARE FINANCING ADMINISTRATION, DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR chapter IV would be amended as set forth below.

PART 431—STATE ORGANIZATION AND GENERAL ADMINISTRATION

A. Part 431 is amended as follows:

1. The authority citation for part 431 continues to read as follows:

Authority: Section 1102 of the Social Security Act (42 U.S.C. 1302).

2. In § 431.610, paragraph (e) is revised to read as follows:

§ 431.610 Relations with standard-setting and survey agencies.

* * * * *

(e) *Designation of survey agency.* The plan must provide that—

(1) The agency designated in paragraph (b) of this section, or another State agency responsible for licensing health institutions in the State, determines for the Medicaid agency if institutions and agencies meet the requirements for participation in the Medicaid program;

(2) The agency staff making the determination under paragraph (e)(1) of this section is the same staff responsible for making similar determinations for institutions or agencies participating under Medicare; and

(3) The agency designated in paragraph (e)(1) of this section recommends the effective date of an agreement for a provider as provided under § 442.13 of this chapter.

* * * * *

PART 440—SERVICES: GENERAL PROVISIONS

Subpart A—Definitions

B. Part 440, subpart A is amended as follows:

1. The authority citation for part 440 continues to read as follows:

Authority: Section 1102 of the Social Security Act (42 U.S.C. 1302).

2. A new § 440.3 is added to read as follows:

§ 440.3 Effective dates of provider agreements.

The effective dates of provider agreements for all types of Medicaid providers are determined in accordance with § 442.13 of this subchapter.

PART 442—STANDARDS FOR PAYMENT FOR SKILLED NURSING AND INTERMEDIATE CARE FACILITY SERVICES

C. Part 442 is amended as follows:

1. The authority citation for part 442 continues to read as follows:

Authority: Section 1102 of the Social Security Act (42 U.S.C. 1302), unless otherwise noted.

2. The title of part 442 is revised to read as follows.

PART 442—STANDARDS FOR PAYMENT FOR NURSING FACILITIES AND INTERMEDIATE CARE FACILITIES FOR THE MENTALLY RETARDED

3. In § 442.13, paragraph (a) is republished, and paragraphs (b) and (c) are revised, and new paragraph (d) is added to read as follows:

§ 442.13 Effective date of agreement.

(a) *Basic requirements.* If the Medicaid agency enters into a provider agreement, the effective date must be in accordance with this section.

(b) *All Federal requirements are met on the date of the State agency survey.* The agreement must be effective on the date the onsite survey (including the Life Safety Code survey) is completed (or on the day following the expiration of a current agreement) if, on the date of the survey, the provider meets:

(1) All Federal requirements; and

(2) Any other requirements imposed for participation in the Medicaid program.

(c) *All Federal requirements are not met on the date of the State agency survey.* If the provider fails to meet any of the requirements specified in paragraph (b) of this section, the agreement must be effective on the earlier of the following dates:

(1) The date on which the provider meets all requirements; or

(2) The date on which a provider is found to meet all conditions of participation or conditions for coverage, or Level A requirements for NFs and the facility submits an acceptable correction plan for lower deficiencies, or an approval waiver request, or both. When the plan of correction or waiver request is approved or accepted by HCFA or the State agency later than the date on which it is submitted, the effective date is the date of submission.

(d) *Provider applies to participate in Medicaid after it is deemed to meet all Federal requirements by an accreditation organization.* (1) If a provider is deemed to meet all Federal requirements (including Life Safety Code requirements), the effective date of the provider agreement is the date on which the provider makes its initial request to the State Medicaid agency to participate in the Medicaid program. However, the effective date of the provider agreement cannot be before the date on which:

(i) The accreditation organization conducts its initial onsite survey of the provider and deems it to meet all Federal requirements, and

(ii) HCFA approves the organization conducting the survey of the provider as an accreditation organization.

(2) *Exception:* If a provider is accredited but is required to meet special requirements for which an accreditation organization is not authorized to deem, the effective date of the provider agreement is the date that all of the Federal requirements, including the special requirements, are met or deemed to be met.

PART 488—SURVEY AND CERTIFICATION PROCEDURES

D. Part 488, subpart A is amended as follows:

1. The authority citation for part 488 continues to read as follows:

Authority: Sec. 1102, 1814, 1861, 1865, 1871, 1880, 1881, and 1883 of the Social Security Act (42 U.S.C. 1302, 1395f, 1395x, 1395bb, 1395cc, 1395hh, 1395qq, 1395rr, and 1395tt).

2. In § 488.11, the introductory text is reprinted and paragraphs (b), (c), and (d) are revised to read as follows:

§ 488.11 State survey agency functions.

State and local agencies that have agreements under section 1864(a) of the Act—

* * * * *

(b) Conduct validation surveys as provided in § 488.6;

(c) Perform surveys and other appropriate activities and certify that their findings to HCFA; and

(d) Recommend the effective date of an agreement for a provider or the participation for a supplier as provided under § 489.13 of this subchapter.

PART 489—PROVIDER AGREEMENTS UNDER MEDICARE

E. Part 489 is amended as follows:

1. The authority citation for part 489 continues to read as follows:

Authority: Secs. 1102, 1861, 1864, 1866, and 1871 of the Social Security Act (42 U.S.C. 1302, 1395x, 1395aa, 1395cc, and 1395hh).

* * * * *

2. In § 489.1, new paragraph (d) is added:

§ 489.1 Statutory basis.

* * * * *

(d) Although section 1866 of the Social Security Act pertains to providers and provider agreements, the rule in this part includes procedures for the effective date of approval for suppliers.

3. § 489.13 is revised to read as follows:

§ 489.13 Effective date of agreement or approval.

(a) *All Federal requirements are met on the date of the survey.* The agreement or approval must be effective on the date the onsite survey (including the Life Safety Code survey) is completed (or on the day following the expiration date of a current agreement) if, on the date of the survey, the provider or supplier meets all Federal requirements.

(b) *All Federal requirements are not met on the date of the survey.* If the provider or supplier fails to meet any of the requirements specified in paragraph (a) of this section, the agreement or approval must be effective on the earlier of the following dates:

(1) The date on which the provider or supplier meets all requirements or

(2) The date on which the provider or supplier is found to meet all conditions of participation or Level A requirements for SNFs or conditions for coverage and the facility submits an acceptable correction plan for lower-level deficiencies, or an approvable waiver request, or both. When the plan of correction or waiver request is approved or accepted by HCFA or the State agency later than the date on which it is submitted, the effective date is the date of submission.

(c) *Provider applies to participate in Medicare after it is deemed to meet all Federal requirements by an accreditation organization.* (1) If a provider is deemed to meet all Federal requirements, (including Life Safety Code requirements) the effective date of the provider agreement is the date on which the provider makes its initial request to HCFA to participate in the Medicare program. However, the effective date of the provider agreement cannot be before the date on which:

(i) The accreditation organization conducts its initial onsite survey of the provider and deems it to meet all Federal requirements, and

(ii) HCFA approves the organization conducting the survey of the provider as an accreditation organization.

(2) *Exception:* If a provider is accredited but is required to meet special Federal requirements for which an accreditation organization is not authorized to deem, the effective date of the provider agreement is the date that all of the Federal requirements, including the special requirements, are met or deemed to be met.

PART 498—APPEALS PROCEDURES FOR DETERMINATIONS THAT AFFECT PARTICIPATION IN THE MEDICARE PROGRAM

F. Part 498 is amended as follows:

1. The authority citation for 42 CFR part 498 continues to read as follows:

Authority: Sec. 205(a), 1102, 1866(h), 1871, and 1872 of the Social Security Act (42 U.S.C. 405(a), 1302, 1395ff(c), 1395hh, and 1395ii), unless otherwise noted.

2. In § 498.3, the introductory text of paragraph (b) is republished, new paragraph (b)(12) is added, the introductory text of paragraph (d) is republished, paragraph (d)(3) is removed, paragraphs (d)(4)–(10) are redesignated as (d)(3)–(9), respectively, redesignated (d)(9) is revised, and new paragraph (d)(10) is added to read as follows:

§ 498.3 Scope and applicability.

* * * * *

(b) *Initial determinations by HCFA.* HCFA makes initial determinations with respect to the following matters:

* * * * *

(12) The effective date of an agreement between HCFA and a provider or the effective date of the participation of a supplier of services in the Medicare program.

* * * * *

(d) *Administrative actions that are not initial determinations.* Administrative actions other than those specified in paragraphs (b) and (c) of this section are not initial determinations and thus are not subject to this part. Administrative actions that are not initial determinations include, but are not limited to the following:

* * * * *

(9) With respect to a SNF that is not in compliance with a requirement—

(i) The finding that the SNF's deficiencies pose immediate jeopardy to patients' health and safety; and

(ii) When the SNF's deficiencies do not pose immediate jeopardy, the decision to deny payment for new admissions.

(10) The decision by the State agency as to when to conduct an initial survey of a prospective provider or prospective supplier.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare Hospital Insurance; Program No. 93.774, Medicare Supplementary Medical Insurance; and Program No. 93.778, Medicare Assistance Program.)

Dated: September 29, 1992.

William Toby,

Acting Deputy, Administrator, Health Care Financing Administration.

Approved: October 1, 1992.

Louis W. Sullivan,

Secretary.

[FR Doc. 92–24318 Filed 10–7–92; 8:45 am]

BILLING CODE 4120–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 63

[CC Docket No. 87–266; DA 92–1300]

Rural Exemption to Telephone Company-Cable Television Cross Ownership Rules

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment period.

SUMMARY: This order extends the comment and reply dates to October 13 and November 12, respectively, on a proposed rule concerning telephone company-cable television cross-ownership rules to allow time for completion of population studies.

DATES: Comments must be filed on or before October 13, 1992, and reply comments on or before November 12, 1992.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Greg Lipscomb, Common Carrier Bureau, (202) 634–4216; or Donna N. Lampert, Common Carrier Bureau, (202) 632–9342.

SUPPLEMENTARY INFORMATION: The summary of the Second Further Notice of Proposed Rulemaking in this proceeding, adopted July 16, 1992 and released August 14, 1992, was printed in the **Federal Register**, see 57 FR 41118 (September 9, 1992).

List of Subjects in 47 CFR Part 63

Cable television, Telephone company-cable television cross-ownership rules.

Federal Communications Commission.

Cheryl A. Tritt,

Chief, Common Carrier Bureau.

[FR Doc. 92–24387 Filed 10–7–92; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 87-268; DA 92-1344]

Advanced Television Systems and Their Effect on the Existing Television Service

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Commission's Chief Engineer has extended the time for filing comments and reply comments in response to the Second Further Notice of Proposed Rule Making (Second Further Notice) in MM Docket No. 87-268, FCC 92-332, released August 14, 1992, 51 FR 38652 (August 26, 1992). The Second Further Notice sets forth proposals for policies to be used in allotting reversion channels for advanced television service (ATV).

DATES: Comments must be filed on or before November 2, 1992, and reply comments on or before December 2, 1992.

ADDRESSES: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Alan Stillwell (202-653-8162) or Robert Eckert (202-653-8163), Office of Engineering and Technology, or Gordon Godfrey (202-632-9660), Mass Media Bureau.

SUPPLEMENTARY INFORMATION: In a joint letter of September 11, 1992, the Association of Maximum Service Telecasters and nine other parties asked the Commission to clarify certain technical information in the Second Further Notice and to extend the period for filing comments to allow sufficient time to prepare responses in light of the requested technical information. Comments and reply comments were originally due October 13, 1992, and November 12, 1992, respectively. We have placed the information requested in the joint letter in the docket file in this proceeding and are extending the period for filing comments to allow 30 days for filing comments after the date the requested information was placed in the docket file. We believe this extension of time will further the development of the record in this proceeding and will not delay our final action on ATV channel allotment policy.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92-24388 Filed 10-7-92; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 92-225, RM-8073]

Radio Broadcasting Services; Northport, AL and Macon, MS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Warrior Broadcasting, Inc., licensee of Station WLXY(FM), Channel 264A, Northport, Alabama, seeking the substitution of Channel 264C3 for Channel 264A at Northport, and modification of the license for Station WLXY(FM) accordingly. In order to accommodate the request, petitioner seeks the deletion of vacant Channel 263A at Macon, Mississippi, or alternatively, the placement of a site restriction on the existing Macon allotment. (In the event an expression of interest is received in retaining Channel 263A at Macon, a new application filing window will be opened for the channel upon termination of this proceeding.) Coordinates used for Channel 264C3 at Northport, Alabama, are 33-16-00 and 87-44-01. Coordinates at the proposed restricted site for Channel 263A at Macon, Mississippi, are 33-05-10 and 88-39-48. See Supplementary Information, *infra.*

DATES: Comments must be filed on or before November 23, 1992, and reply comments on or before December 8, 1992.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Warrior Broadcasting, Inc., Attn: James E. Shaw, President, 3330 Main Avenue, P.O. Box 1020, Northport, Alabama 35476.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 92-225, adopted September 11, 1992, and released October 2, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1990 M St., NW., suite 640, Washington, DC 20036.

Petitioner's modification proposal complies with the provisions of § 1.420(g) of the Commission's Rules. Therefore, we will not accept competing expressions of interest in the use of Channel 264C3 at Northport, Alabama, or require the petitioner to demonstrate the availability of an additional equivalent class channel.

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

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

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

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

Federal Communications Commission.

Michael C. Ruger,

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

[FR Doc. 92-24451 Filed 10-7-92; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 92-218, RM-8053 and RM-8054]

Radio Broadcasting Services; Olathe and Topeka, KS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on two separately filed and mutually exclusive petitions. The first proposal, filed by Bott Broadcasting Company requests the substitution of Channel 222C3 for Channel 222A at Olathe, Kansas, and modification of the construction permit for Station KCCV (FM) to specify operation on Channel 222C3. The coordinates for Channel 222C3 are 38-58-46 and 94-50-44. To accommodate the upgrade at Olathe, Bott Broadcasting Company has proposed the substitution of Channel 257A for Channel 223A at Topeka,

Kansas. The coordinates for Channel 257A at Topeka are 39–07–33 and 95–41–08. Margaret Escriva, permittee of Channel 223A, Topeka, Kansas, has requested the substitution of Channel 223C3 for Channel 223A at Topeka, and modification of her construction permit accordingly. The coordinates for Channel 223C3 at Topeka are 39–05–31 and 95–47–05.

DATES: Comments are due on or before November 23, 1992, and reply comments on or before December 8, 1992.

ADDRESSES: Federal Communications Commission, Washington, DC 20554 In addition to filing comments with the FCC, interested parties should serve the petitioners' counsel, as follows:

Harry C. Martin, Cheryl A. Kenny, Reddy, Begley & Martin 1001 22nd Street, NW., suite 350, Washington, DC 20037; Meredith S. Senter, Jr., Stephen D. Baruch, Leventhal, Senter & Lerman, 2000 K Street, NW., suite 600, Washington, DC 2006–1809.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 92–218, adopted September 3, 1992, and released October 2, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1990 M Street, NW., suite 640, Washington, DC 20036, (202) 452–1422.

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

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

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

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

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

[FR Doc. 92–24452 Filed 10–7–92; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 92–221, RM–8071]

Radio Broadcasting Services; Quincy and Susanville, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Olympic Broadcasters, Inc., licensee of Station KQNC (FM), Quincy, California, seeking the reallotment of Channel 271A from Quincy to Susanville, California, and modification of its license to specify operation on Channel 271C2 at the latter community. Coordinates used for channel 271C2 at Susanville are 40–27–13 and 120–34–14.

Petitioner's modification proposal complies with the provisions of § 1.420(g) and (i) of the Commission's Rules. Therefore, we will not accept competing expressions of interest in the use of Channel 271C2 at Susanville, or require the petitioner to demonstrate the availability of an additional equivalent class channel.

DATES: Comments must be filed on or before November 23, 1992, and reply comments on or before December 8, 1992.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Richard A. Helmick, Esq., Cohn and Marks, 1333 New Hampshire Ave., NW., suite 600, Washington, DC 20036.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 92–221, adopted September 9, 1992, and released October 2, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452–1422, 1990 M St., NW., suite 640, Washington, DC 20036.

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

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

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

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

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

[FR Doc. 92–24453 Filed 10–7–92; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 92–220, RM–8075]

Radio Broadcasting Services; Moose Lake, MN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Agate Broadcasting of Minnesota requesting the allotment of FM Channel 296C3 to Moose Lake, Minnesota, as that community's first local service. Canadian concurrence will be requested for this allotment at coordinates 46–27–24 and 92–45–30.

DATES: Comments are due on or before November 23, 1992, and reply comments on or before December 8, 1992.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Brian T. Grogan, Moss & Barnett, 4800 Norwest Center, 90 South Seventh Street, Minneapolis, Minnesota 44502–4129.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 92–220 adopted September 8, 1992, and released October 2, 1992. The full text of

this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1990 M Street NW., suite 640, Washington, DC 20036, (202) 452–1422.

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

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

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

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

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

[FR Doc. 92–24452 Filed 10–7–92; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 92–219, RM–8039]

Radio Broadcasting Services; Tarkio, MO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document request comments on a petition filed by KANZA, Inc., proposing the substitution of Channel 228C3 for Channel 228A and modification of the license for Station KTRX(FM) to specify operation on the new channel at Tarkio, Missouri. The coordinates for Channel 228C3 are 40–33–50 and 95–15–00.

DATES: Comments must be filed on or before November 23, 1992, and reply comments on or before December 8, 1992.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner' counsel, as follows: John R. Wilner, Bryan Cave, 700 Thirteenth Street, NW., suite 600, Washington, DC 20006–3960.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commissioner's Notice of Proposed Rule Making, MM Docket No. 92–219, adopted September 8, 1992, and released October 2, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1990 M Street, NW., suite 640, Washington, DC 20036, (202) 452–1422.

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

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

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

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

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

[FR Doc. 92–24455 Filed 10–07–92; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 57, No. 196
Thursday, October 8, 1992

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 No. 92-152-1]

Receipt of Permit Application for Release Into the Environment of Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an application for a permit to release genetically engineered organisms into the environment is being reviewed by the Animal and Plant Health Inspection Service. The application has been submitted in accordance with 7 CFR part 340, which regulates the introduction of certain genetically engineered organisms and products.

ADDRESSES: Copies of the application referenced in this notice, with any confidential business information deleted, are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. You may obtain copies of this document by writing to the person listed under "FOR FURTHER INFORMATION CONTACT."

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Foudin, Deputy Director, Biotechnology Permits, Biotechnology, Biologics, and Environmental Protection, APHIS, USDA, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7612.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests," require a person to obtain a permit before introducing (importing, moving interstate, or releasing into the environment) into the United States certain genetically engineered organisms and products that are considered "regulated articles." The regulations set forth procedures for obtaining a permit for the release into the environment of a regulated article, and for obtaining a limited permit for the importation or interstate movement of a regulated article.

Pursuant to these regulations, the Animal and Plant Health Inspection Service has received and is reviewing the following application for a permit to release genetically engineered organisms into the environment:

Application No.	Applicant	Date received	Organisms	Field test location
92-255-01	ICI Seeds, Inc.	09-11-92	Corn plants genetically engineered to express genes from a non-pathogenic source organism and tolerance to the herbicide glufosinate..	Hawaii.

Done in Washington DC, this 2nd day of October 1992.

Robert Melland,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92-24486 Filed 10-7-92; 8:45 am]
BILLING CODE 3410-34-M

Forest Service

Southern Region; Exemption From Appeal of the Decision To Control Southern Pine Beetle in Upland Island Wilderness

AGENCY: Forest Service, USDA.

ACTION: Notice; exemption of decision from administrative appeal.

SUMMARY: Pursuant to 36 CFR 2.4(a)(11), the Regional Forester for the Southern Region has determined that good cause exists and notices is hereby given to exempt from administration appeal the decision to suppress southern pine beetle (SPB) infestations within Upland Island Wilderness, Angelina National Forest, Texas, during the current outbreak where they are threatening pine forests on adjacent private lands and potentially threatening a colony and foraging habitat of the red-cockaded woodpecker (RCW), a federally-listed endangered species.

EFFECTIVE DATE: October 8, 1992.

FOR FURTHER INFORMATION CONTACT: Wesley A. Nettleton, Group Leader, Entomology, Southern Region, Forest Service-USDA, 1720 Peachtree Road, NW., Atlanta, GA 30367 (404) 347-2961.

SUPPLEMENTARY INFORMATION: The Forestry Stewardship Act of 1990 authorizes the protection of federally-owned forest lands from insects and diseases. The 1964 Wilderness Act in section 4(d)(1), states; "In addition, such conditions as the Secretary deems desirable." The 1973 Endangered Species Act requires that the Forest Service must "seek to conserve endangered species." The USDI Fish and Wildlife Service (FWS) issued a biological opinion dated December 12, 1986, stating that failure to take action in wilderness to protect the RCW colonies from SPB is likely to jeodardize the continued existence of the species. The Forest Service followed the advice of the FWS. A Record of Decision (ROD) for the Final Environmental Impact Statement for the Suppression of the Southern Pine Beetle (SPB-FEIS) was signed on April 6, 1987. The alternative selected in the ROD protects RCW colonies within the wilderness and adjacent private forested land by permitting suppression of SPB spots within wilderness. However, stringent criteria were set for determining the need for any control action. In wilderness, SPB spots will normally be allowed to run their natural course until an essential RCW colony or its foraging habitat or adjacent forested-private land is threatened. Before any control action is taken a site-specific environmental analysis must be completed. It must

indicate that the spot: (1) Occurs within ¼ mile of susceptible host type on private land, or (2) is predicted to threaten an essential RCW colony site within the next 30 days. The analysis must also show a reasonable expectation of meeting the control objectives. Affected and interested publics will be informed about potential control-related activities.

One SPB spot has crossed the wilderness boundary this year and others are active within the wilderness and within ¼ mile of susceptible host pine forests on private commercial forests and forested residential areas. Due to the current major SPB outbreak within Upland Island Wilderness, an environmental analysis is currently underway on a proposed action to suppress the SPB infestations that are predicted to cross the wilderness boundary onto private lands where owners show evidence of actively managing their land to suppress SBP infestations, or are maintaining a high degree of forest health. It also proposes to protect the essential RCW colony #95–1 and its associated foraging habitat that occurs within Upland Island Wilderness. The analysis includes control methods identified in the selected alternative in the ROD for SPB–FEIS, and it also analyzes the use of behavioral chemicals that have been proven effective in local experimental work by the Texas Forest Service. The environmental document being prepared will disclose the effects of the proposed action on the environment, document public involvement, and address the issues raised by the public.

Given the existing rapid expansion of infestations, time for action is critical. Any additional delay could result in further loss to presently undamaged forest resources on adjacent private lands or an essential RCW colony site resulting in a violation of the Endangered Species Act.

Dated: October 2, 1992.

Robert J. Lentz,

Deputy Regional Forester.

[FR Doc. 92–24443 Filed 10–7–92; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Agenda and Public Meeting of the New York State 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 New York State Advisory Committee will be convened at 1:15 p.m. and adjourn at 4 p.m. on Friday, October 30, 1992, in Conference Room 317–A, Leo O'Brien Federal Building, North Pearl Street and Clinton Avenue, Albany, New York, 12207. The purposes of the meeting are to release the Committee's recently approved report, Minority Elderly Access to Health Care and Nursing Homes and complete details for a Statewide conference.

Persons desiring additional information, or planning a presentation to the Committee, should contact Setsuko M. Nishi (718/951–5324, 212/642–2401) or John I. Binkley, Director, ERO, at (202/523–5264) or TDD (202/376–8116). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the 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, October 2, 1992.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 92–24460 Filed 10–7–92; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation.

BACKGROUND: Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party as defined in section 771(9) of the Tariff Act of 1930 may request, in accordance with § 353.22 of § 355.22 of the Commerce Regulations, that the Department of Commerce ("the Department") conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

OPPORTUNITY TO REQUEST A REVIEW: Not later than October 31, 1992, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in October for the following periods:

Antidumping duty proceedings	Period
Italy:	
Pressure Sensitive Plastic Tape. (A–475–059)	10/01/91–09/30/92
Steel Wire Rope. (A–588–045)	10/01/91–09/30/92
Tapered Roller Bearings, 4 Inches or Less in Outside Diameter and Certain Components Thereof. (A–588–054)	10/01/91–09/30/92
Tapered Roller Bearings, and Parts Thereof, Finished and Unfinished, Over 4 Inches. (A–588–604)	10/01/91–09/30/92
The People's Republic of China:	
Barium Chloride. (A–570–007)	10/01/91–09/30/92
Shop Towels of Cotton. (A–570–003)	10/01/91–09/30/92
Yugoslavia:	
Industrial Nitrocellulose. (A–479–801)	10/01/91–09/30/92
Countervailing Duty Proceedings	
Argentina:	
Leather. (C–357–803)	01/01/91–12/31/91
Brazil:	
Certain Agricultural Tillage Tools. (C–351–406)	01/01/91–12/31/91
India:	
Certain Iron-Metal Castings. (C–533–063)	01/01/91–12/31/91
Iran:	
Roasted In-Shell Pistachios. (C–507–601)	01/01/91–12/31/91
New Zealand:	
Certain Steel Wire Nails. (C–614–701)	01/01/91–12/31/91

Antidumping duty proceedings	Period
Sweden:	
Certain Carbon Steel Products. (C-401-401)	01/01/91-12/31/91
Thailand:	
Certain Steel Wire Nails. (C-549-701)	01/01/91-12/31/91

In accordance with §§ 353.22(a) and 355.22(a) of the Commerce regulations, an interested party may request in writing that the Secretary conduct an administrative review of specified individual producers or resellers covered by an order, if the requesting person states why the person desires the Secretary to review those particular producers or resellers. If the interested party intends for the Secretary to review sales of merchandise by a reseller (or a producer if that producer also resells merchandise from other suppliers) which was produced in more than one country of origin, and each country of origin is subject to a separate order, then the interested party must state specifically which resellers(s) and which countries of origin for each reseller the request is intended to cover.

Seven copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B-099, U.S. Department of Commerce, Washington DC 20230. Further, in accordance with § 353.31 or § 355.31 of the Commerce Regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the Federal Register a notice of "Initiation of Antidumping (Countervailing) Duty Administrative Review", for requests received by October 31, 1992.

If the Department does not receive, by October 31, 1992, a request for review of entries covered by an order or finding listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute, but is published as a service to the international trading community.

Dated: October 1, 1992.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 92-24557 Filed 10-7-92; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-702]

Certain Stainless Steel Butt-Weld Pipe and Tube Fittings From Japan; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administration review.

SUMMARY: On May 8, 1992, the Department of Commerce published in the Federal Register the preliminary results of its 1990-91 administrative review of the antidumping order on certain stainless steel butt-weld pipe and tube fittings (SSPFs) from Japan. The review covers one manufacturer/exporter of this merchandise to the United States, Benkan Corporation (Benkan), and the period from March 1, 1990 through February 28, 1991.

The Department gave interested parties an opportunity to comment on the preliminary results. Based on our analysis of comments received, the dumping margins have not changed from the preliminary results of review. However, we note that the rate published in the preliminary results of review should have been 5.37 percent, not 5.30 percent and that the 5.37 percent rate was disclosed to interested parties. The difference in the rates is attributable to numeric rounding.

EFFECTIVE DATE: October 8, 1992.

FOR FURTHER INFORMATION CONTACT: Bruce Harsh or Linda L. Pasden, 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) 482-3793.

SUPPLEMENTARY INFORMATION:

Background

On May 8, 1992, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on certain stainless steel butt-weld pipe and tube fittings (SSPFs) from Japan in the Federal Register (57 FR 19882). This review covers shipments made by Benkan during the period from March 1, 1990 through February 28, 1991. Verification was conducted at Benkan in Japan the week of November 4, 1991. The Department has now completed this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Review

The products covered by this review are certain stainless steel butt-weld pipe and tube fittings. These fittings are used in piping systems for chemical plants, pharmaceutical plants, food processing facilities, waste treatment facilities, semiconductor equipment applications, nuclear power plants, and other areas. This merchandise is currently classifiable under the Harmonized Tariff Schedules (HTS) item 7307.23.0000. The HTS item number is provided for convenience and U.S. Customs purposes. The written product description remains dispositive.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results of this review. We received timely written comments from Benkan, the respondent. Flowline, the petitioner, provided timely rebuttal statements to Benkan's comments.

Comment 1: Benkan takes issue with the Department's exclusion of a certain related distributor's sales. Benkan notes that the reason stated by the Department in the preliminary results for the exclusion of these sales is that the Department was not satisfied that the price was comparable to the price at which Benkan sold such or similar merchandise to unrelated parties. However, the respondent claims that its sales were at arm's length because the prices to its related distributor were "comparable" to those charged to unrelated customers, and were even higher for a substantial number of product groups.

Benkan further claims that the Department's exclusion of the sales to the related distributor is clearly contradicted by the factual evidence on the record. Moreover, Benkan asserts that none of the facts relating to Benkan's sales to the related distributor have changed from the previous proceedings. Benkan notes that the Department examined home market

sales of conventional fittings in the original investigation and in two previous reviews, and verified data in two of the previous proceedings, and was satisfied that Benkan's sales to the related distributor were at arm's length.

Benkan argues that the Department's statements made in the disclosure conference on June 1, 1992, and the explanation provided in the preliminary results, regarding the exclusion of sales to the related distributor in question were inconsistent. Benkan notes that while the preliminary results emphasize price terms, the verification report emphasizes differences in sales contracts. Benkan points out that, assuming arguendo that the exclusion of the sales occurred because there were differences in the sales contracts rather than differences in prices, its contract with this particular distributor does not, on its face, reveal any terms that are "special" or "different" from other sales contracts. In addition, since the Department elected not to include any contracts that were "different" in the verification exhibits, or substantiate the differences between the contracts, it is unfair to ask Benkan to prove the negative. Benkan urges the Department to specifically state its reasons if the Department decides to exclude this related distributor's sales.

Petitioner holds that the statute and regulations both support the Department's position as stated in the preliminary results to exclude related party transactions. Flowline asserts that the burden of proof is on Benkan to satisfy the Department that the sales to a related party are at arm's length. Moreover, Benkan did not provide any new information that might overcome the regulatory presumption to exclude such sales.

Department's Position: We disagree with Benkan, and have continued to disregard these sales in the calculation of foreign market value (FMV) for the final results of this administrative review. Based on the sales contracts and other documents the Department examined at verification, we believe that sales made to this related distributor were not arm's length.

We found that, unlike the other distributors, this related distributor received a mark-up or commission. According to Benkan, the mark-up or commission was given to secure Benkan's relationship with this distributor; the amount varied depending upon the complexity of the sale (memorandum to the file, dated June 8, 1992). However, we do not have information on the record concerning the specific mark-up by transaction. We also found, at verification, that the prices reported in the questionnaire response were not the prices to this related distributor but were net of the mark-up or commission paid (Verification Exhibit BC–5). Since Benkan did not report the actual price paid, we could not, as suggested by Benkan, conduct a price-to-price comparison to determine whether these prices are arm's length (section 353.45(a) of the Commerce regulations). thus, as best information available, the Department concluded that the prices were not arm's length and could not be relied upon for price comparisons. (See 19 CFR 353.38).

Whether or not these prices are arm's length was not an issue in the original investigation or in previous reviews. This is the first time that the issue arose as a result of our verification. The Department must consider the evidence on the road of each review in making factual determinations such as this.

Comment 2: Benkan argues that the Department unreasonably rejected its difference-in-merchandise (DIFMER) adjustment calculation, which used an average per-ton, steel-pipe cost. Benkan points out that Commerce stated that no adjustments were made for the differences in merchandise because, at verification, the Department determined that Benkan improperly calculated the material costs by aggregating costs of different schedules of pipe.

Benkan asserts that the Department's position in this review is a sudden change from the methodology used in prior reviews and that Benkan has never been required to provide steel pipe costs by schedule (i.e., pipe thickness) or by pipe size, in this or any prior proceeding. The respondent argues that because the Department has consistently accepted Benkan's DIFMER methodology in the three prior proceedings and never requested any modification of its steel pipe cost data in this review, the Department is acting in an unfair manner. The respondent notes a decision made by the Court of International Trade (CIT) in *Shikoku Chemicals Corp., et. al.* v. *United States*, Slip Op. 92–74 (May 18, 1992) that rejects a sudden change in methodology where the Department had consistently used another methodology in several prior reviews and in the original investigation. The Court noted the Department's consistent application of another methodology in several proceedings and found that, given the unique facts of the case, the respondents had "a right to rely on Commerce's consistent approach extending over the original fair value investigation and four annual reviews."

Benkan also notes that the CIT has held that the Department erred in rejecting claimed adjustments on the grounds of insufficient information, citing *Floral Trade Council of Davis, Cal* v. *United States*, 775 Fed Supp. 1492 (CIT 1991). In that case, the CIT reversed Commerce's decision to reject calculation adjustments from certain respondents since they had failed to provide sufficient information to the Department concerning the requested adjustments.

Respondent also claims that the Department's methodology for selecting home market comparisons, comparing "always" the heavier schedule pipe fittings, necessitates the granting of the DIFMER adjustment in order to offset a "systematic bias" against Benkan.

Benkan notes that the record fails to provide any insight as to why the Department considered it imperative that the respondent calculate steel pipe by schedule rather than by pipe size or by supplier. At verification, the Department never attempted to test the validity of its assumption against other price-affecting factors in steel products.

The petitioner argues that the Department's denial of the DIFMER adjustment was appropriate and necessary. Petitioner notes that Benkan's physical DIFMER adjustment did not directly account for cost differences tied to wall schedule differences which had been described in Benkan's response dated July 3, 1991; they merely accounted for average cost differences based on weight. In addition, the verification report notes that Benkan could have accounted for costs attributable to pipe schedule differences.

The petitioner asserts that Benkan is being disingenuous to argue that it "has never objected * * * and the Department has never required Benkan to provide steel costs by 'schedule.' " Petitioner points out that this is the first time that the description of Benkan's DIFMER adjustment is correctly understood, even though it had been reviewed previously.

Petitioner further argues that the Department is not being "systematically biased" against Benkan in the use of best information available regarding the product comparisons.

Department's Position: Based on information obtained at verification, we determined that Benkan's DIFMER allocation methodology is not reasonable because it did not properly allocate the actual costs associated with the physical attributes of the SSPFs.

In the questionnaire response Benkan claimed that the model match must be based on the significant physical attributes of the SSPF Accordingly,

Benkan established a 6-digit code which denotes the physical appearance (i.e., shape or type of fitting), material grade, size (outside diameter), will thickness and component material (i.e., seamless or welded pipe) (para. 4, p. 18). Using the 6-digit code, Benkan determined the identical or the most similar home market matches and reported them in the Merchandise Concordance List (Exhibit 13). Where similar matches were found, Benkan provided the material costs for the U.S. product and the most similar home market product.

Only through verification did we learn that Benkan's material costs were reported as averages of several different schedules of pipe in various sizes, and wall thicknesses, and that these averages were multiplied by the weight of the pipe to derive the reported DIFMERs. Moreover, we found that this allocation method was used for reporting purposes only and did not reflect how Benkan tracks the cost of the raw material pipe in its accounting records. Specifically, we found that Benkan tracks these costs by grade, size, schedule, etc. (verification Exhibits F-1 and F-4).

Since the size and wall thickness of the pipe are physical attributes used in the model matching process, and they are significant factors in the cost of the pipe, we determined that the use of overall average costs is inappropriate and is not reflective of the cost of physical differences. Our determination is further supported by the fact that the price of the raw material pipe varied by as much as 11 percent.

Benkan's assertion that the Department's position to not allow a DIFMER adjustment, particularly under these circumstances of the review, was "systematically biased" against it and ensured dumping margins is not true. The Department gave Benkan an opportunity to provide specific alternative model matches for any comparison it did not agree with in the preliminary results. Since Benkan did not provide any alternative model matches and the company did not question the Department's selection of comparison models as not being such or similar, the Department continued to use the same models.

Moreover, Benkan's assertion that the Department should further test the validity of its assumption against "other steel-price-affecting factors" goes far beyond the purpose of verification, which is to determine the accuracy and completeness of the response. In this instance, the Department determined that Benkan's DIFMER calculations did not adequately reflect the costs of the physical differences.

We agree with Benkan's assertion that the Department should strive for consistency in its methodology. However, the DIFMER allocation was not an issue which had been focused upon by either the Department or the parties in the original investigation or in previous reviews. As a result, Benkan's claim that it relied on the Department's decision in prior reviews is without merit and Benkan cannot be said to rely on any affirmative actions by the Department with respect to its method of reporting raw material costs.

Although Benkan raises the *Shikoku* case to argue its point, that case is not final at this date. The case at hand is further distinguished from the *Shikoku* case by the fact that Benkan does not have four consecutive annual reviews with no dumping margins; in *Shikoku*, the Court emphasized that it was only the change in methodology that prevented *Shikoku* from obtaining a revocation. *Id.* Indeed, Benkan has never received a zero rate. Finally, the reporting error in this review is much more significant than the "insignificant" error in the *Shikoku* case.

Final Results of Review

After analysis of the comments received, we determined that a margin of 5.37 percent exists for Benkan for the period March 1, 1990 through February 28, 1991.

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on entries of the subject merchandise covered by this review. The Department will issue appraisement instructions directly to the U.S. Customs Service.

Furthermore, the following deposit requirements will remain in effect until publication of the final results of the next administrative review for all shipments of the subject merchandise, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate will be 5.37 percent for Benkan; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will be 5.37 percent. This rate represents the highest rate for any firm with shipments in the most recent administrative review, other than those firms receiving a rate based entirely on best information available.

These deposit requirements, when imposed, will remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties.

In addition, this notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.35(d). Failure to comply is a violation of the APO.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and § 353.22 of the Commerce Department's regulations (19 CFR 353.22).

Dated: October 1, 1992.

Rolf Th. Lundberg,

Acting Assistant Secretary for Import Administration.

[FR Doc. 92-24558 Filed 10-7-92; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Florida Keys National Marine Sanctuary Advisory Council Meeting

AGENCY: Sanctuaries and Reserves Division (SRD), Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Florida Keys National Marine Sanctuary Advisory Council; Notice of open meeting.

SUMMARY: The Council was established in December 1991 to advise and assist the Secretary of Commerce in the development and implementation of the comprehensive management plan for the Florida Keys National Marine Sanctuary.

Time and place: October 23, 1992 from 9:00 a.m. until adjournment. The meeting

location will be at the Buccaneer Resort, Mile Marker 48.5, Route 1, Marathon, Florida.

Agenda

1. Presentations related to zoning
2. Discussion of management alternatives

Public Participation

The meeting will be open to public participation and the last thirty minutes will be set aside for oral comments and questions. Seats will be set aside for the public and the media. Seats will be available on a first-come first-served basis.

FOR FURTHER INFORMATION CONTACT: Pamala James at (305) 743–2437 or Ben Haskell at (202) 606–4016.

Dated October 6, 1992.

Frank W. Maloney,

Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

(Federal Domestic Assistance Catalog Number 11.429, Marine Sanctuary Program)

[FR Doc. 92–24683 Filed 10–7–92; 8:45 am]

BILLING CODE 3510–08–M

Marine Mammals; Permits

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

ACTION: Issuance of modification to Permit No. 738 (P77#51).

Notice is hereby given that pursuant to the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), § 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act (16 U.S.C. 1531–1543) and the regulations governing endangered fish and wildlife (50 CFR parts 217–222), and the Conditions hereinafter set out, Scientific Research Permit No. 729, issued to the Southeast Fisheries Science Center, National Marine Fisheries Service, P.O. Box 271, La Jolla, CA 92038, on May 16, 1991 (56 FR 23684), has been modified to add aerial surveys and an increased number of takes of those species previously authorized, in order to include all cetaceans which may be sighted during the course of conducting aerial surveys.

This modification also grants authority for the addition of the following species to the list of cetaceans which may be sighted during the surveys, over the remaining three-and-one-half-year period that the permit is valid: up to 2500 right whale (*Eubalaena glacialis*); 250 blue whale (*Balaenoptera musculus*); 2500 fin whale (*B. physalus*); 1250 Sei whale (*B. borealis*); 2500 Bryde's whale (*B. edeni*); 2500 minke whale (*B. acutorostrata*); 2500 humpback whale (*Megaptera novaeangliae*); 2500 sperm whale (*Physeter macrocephalus*); 2500 beaked whale, including Cuvier's beaked whale (*Ziphius cavirostris*), Blainville's beaked whale (*Mesoplodon densirostris*), Sowerby's beaked whale (*M. bidens*), and Gervais' beaked whale (*M. europaeus*).

Issuance of this Permit as required by the Endangered Species Act of 1973 was based on a finding that such Permit: (1) was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of this Permit; (3) is consistent with the purposes and policies set forth in section 2 of the Endangered Species Act of 1973. This Permit was also issued in accordance with and is subject to parts 220–222 of title 50 CFR, the National Marine Fisheries Service regulations governing endangered species permits.

This Modification became effective upon signature.

The Permit and Modification documentation are available for review in the following offices by appointment:

Permit Division, Office of Protected Resources, National Marine Fisheries Service, NOAA, 1335 East-West Hwy., Silver Spring, MD 20910 (301/713–2289); and Director, Southeast Region, National Marine Fisheries Services, 9450 Koger Blvd., St. Petersburg, FL 33702 (813/893–3141).

Dated: October 1, 1992.

Nancy Foster,

Office of Protected Resources.

[FR Doc. 92–24470 Filed 10–7–92; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals; Permits

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

ACTION: Request for modification of permit No. (P77 #56).

Notice is hereby given that the National Marine Mammal Laboratory, Alaska Fisheries Science Center, Northwest Region, 7600 Sand Point Way, NE. BIN C15700—Building 1, Seattle, WA 98115–0070, requested a modification to Permit No. 754, issued on November 14, 1991 (56 FR 60688), as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Permit No. 754 currently authorizes the researcher to: (1) Capture, tag, handle and release up to three times per year and to capture, instrument, tag, handle and release up to five times per year, 200 crabeater seals (*Lobodon carcinophagus*), 200 leopard seals (*Hydrurga leptonyx*), 200 weddell seals (*Leptonychotes weddellî*), 100 Ross seals *Ommataphoca rossi*), 200 southern elephant seals (*Mirounga leonina*) and 1100 Antarctic fur seals (*Arctocephalus gazella*); (2) incidentally harass up to 3,000 southern elephant seals, 40,000 Antarctic fur seals and 500 each crabeater, leopard, Weddell, and Ross seals during activities associated with the types of take specified above and with surveys for abundance and distribution of pinnipeds and seabirds; (3) import into the United States all biological specimens taken from the species listed above (e.g., blood samples, vaginal smears) or obtained from dead seals (e.g., skeletal material); and (4) import biological specimens from the pinniped species described above provided by collaborating investigators in Argentina, Australia, Brazil, Canada, Chile, Finland, France, Germany, India, Italy, Japan, New Zealand, Norway, Poland, South Africa, South Korea, Spain, Sweden, United Kingdom, and the USSR.

The applicant now requests authorization to capture, tag, handle and release Antarctic fur seals up to six times per year in order to monitor pup growth over the breeding season for the four-year period that the Permit remains valid.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee on Scientific Advisors.

Written data or views, or requests for a public hearing on this modification request should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East-West Hwy., room 7324, Silver Spring, MD 20910, within 30 days of the publication of this notice. These individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this modification request are summaries of those for the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices by appointment:

Office of Protected Resources, National Marine Fisheries Service, 1335

East-West Hwy., Suite 7324, Silver Spring, MD 20910 (301/713–2289); and Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way, NE., BIN C15700—Building 1, Seattle, WA 98115–0070 (206/526–6150).

Dated: September 29, 1992.

Charles Karnella,

Deputy Director, Office of Protected Resources.

[FR Doc. 92–24469 Filed 10–7–92; 8:45 am]

BILLING CODE 3510–22–M

Patent and Trademark Office

Performance Review Board; Membership

AGENCY: Patent and Trademark Office, Department of Commerce.

ACTION: Announcement of membership of the Patent and Trademark Office Performance Review Board.

SUMMARY: In conformance with the Civil Service Reform Act of 1978, 5 U.S.C. 4314(c)(4), the Patent and Trademark Office announces the appointment of persons to serve as members of its Performance Review Board.

This notice announces the appointment of Deputy Assistant Secretary for Resource Management, Bureau of Diplomatic Security, the United States Department of State, Kathleen J. Charles as the "outside" member of the Performance Review Board to replace the Assistant Director, Office of Executive Development, Human Resources Development Group, Office of Personnel Management, Dr. Michael G. Hansen.

ADDRESS: Comments should be addressed to Personnel Officer, Patent and Trademark Office, Office of Personnel, One Crystal Park, suite 700, Washington, DC 20231.

FOR FURTHER INFORMATION CONTACT: Colleen Woodard at the above address on (703) 305–8062.

SUPPLEMENTARY INFORMATION: The new membership of the Patent and Trademark Office Performance Review Board is as follows:

Bradford R. Huther, Chairman, Assistant Commissioner for Finance and Planning, Patent and Trademark Office, Washington, DC 20231. Term—permanent.

Edward R. Kubasiewicz, Member, Counselor to the Assistant Secretary and Commissioner of Patents and Trademarks, Patent and Trademark Office, Washington, DC 20231. Term—permanent.

Jeffrey M. Samuels, Member, Assistant Commissioner for Trademarks, Patent and Trademark Office, Washington, DC 20231. Term—permanent.

Theresa A. Brelsford, Member, Assistant Commissioner for Public Services and Administration, Patent and Trademark Office, Washington, DC 20231. Term—permanent.

Thomas P. Giammo, Member, Assistant Commissioner for Information Systems, Patent and Trademark Office, Washington, DC 20231. Term—permanent.

John F. Terapane, Jr., Member, Director, Patent Examining Group 120, Patent and Trademark Office, Washington, DC 20231. Term—expires September 30, 1994.

J. David Sams, Member, Chairman, Trademark Trial and Appeal Board, Patent and Trademark Office, Washington, DC 20231. Term—expires September 30, 1994.

Kathleen J. Charles (Outside) Member, Deputy Assistant Secretary for Resource Management, Bureau of Diplomatic Security, U.S. Department of State, Washington, DC 20520. Term—expires September 30, 1994.

Dated: September 29, 1992.

Douglas B. Comer,

Acting Assistant Secretary and Acting Commissioner of Patents and Trademarks.

[FR Doc. 92–24381 Filed 10–7–92; 8:45 am]

BILLING CODE 0651–16–M

COMMISSION OF FINE ARTS

Commission of Fine Arts; Meeting

The Commission of Fine Arts' next meeting is scheduled for 29 October 1992 at 10:00 a.m. in the Commission's offices in the Pension building, suite 312, Judiciary Square, 441 F Street, NW., Washington, DC 20001 to discuss various projects affecting the appearance of Washington, DC, including buildings, memorials, parks, etc.; also matters of design referred by other agencies of the government.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call the above number.

Dated in Washington, DC, 30 September 1992.

Charles H. Atherton,

Secretary.

[FR Doc. 92–24375 Filed 10–7–92; 8:45 am]

BILLING CODE 6330–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Establishment of the Department of Defense (DoD)-Department of Energy (DOE) System Safety Red Team Advisory Committee

ACTION: Notice.

SUMMARY: Under the provisions of Public Law 92–463, the "Federal Advisory Committee Act," notice is hereby given that the DoD-DOE System Safety Red Team Advisory Committee is being established.

The DoD-DOE System Safety Red Team Advisory Committee will advise the Secretary of Defense, Secretary of Energy and the Assistant to the Secretary of Defense (Atomic Energy) on matters relating to the evaluation of safety and precautionary measures applicable to nuclear weapons systems. The committee will: perform technical evaluations of nuclear weapon system design and procedures, as they relate to the prevention of inadvertent nuclear detonation or plutonium dispersal; and, review the nuclear system of safety of warhead and weapon subsystems design in all credible environments, as well as the documentation related to such systems.

Careful efforts will be made to ensure that the membership of the Committee will be diverse and well-balanced in terms of the functions to be performed and the interest groups represented. Members will be drawn from among appropriate officials of the DoD and DOE, as well as several national research laboratories.

For additional information regarding the DoD-DOE System Safety Red Team Advisory Committee, please contact Stanley Keel, telephone: 703–695–7936.

Dated: October 2, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92–24373 Filed 10–7–92; 8:45 am]

BILLING CODE 3810–01–M

Renewal of Five Statutory Boards of the Department of Defense

ACTION: Notice.

SUMMARY: Under the provisions of Public Law 92–463, the "Federal Advisory Committee Act," notice is hereby given that the following statutorily mandated advisory boards of the Department of Defense have been renewed, effective October 1, 1992: The U.S. Military Academy Board of Visitors, the U.S. Naval Academy Board

of Visitors, the U.S. Air Force Academy Board of Visitors, the National Board for the Promotion of Rifle Practice, and the U.S. Army Coastal Engineering Research Board.

The membership of these Advisory Boards is determined primarily by the respective statutes governing their establishment and composition. In those instances where latitude is given, the membership will continue to be diverse and well-balanced in terms of the functions to be performed and the interest groups represented.

For additional information regarding these statutory advisory boards, contact Mr. Hank Gioia, 703-695-4281.

Dated: October 2, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92-24372 Filed 10-7-92; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Department of the Army Historical Advisory Committee; Meeting

1. In accordance with section 10(A)(2) of the Federal Advisory Committee Act (Pub. L. 92-463) announcement is made of the following committee meeting:

Name of Committee: Department of the Army Historical Advisory Committee.

Date: 24 October 1992.

Place: U.S. Army Center of Military History, 2d Floor, Franklin Court Building, 1099 14th Street, NW., Washington, DC 20005-3402.

Time: 24 October—0900-1500 hours.

Proposed Agenda: Review and discussion of the status of historical activities in the U.S. Army.

Purpose of meeting: The committee will review the Army's historical activities for FY 92 based on reports and manuscripts received throughout the period and formulate recommendations through the Chief of Military History to the Chief of Staff, U.S. Army, and the Secretary of the Army for advancing history in the U.S. Army.

2. Meetings of the Advisory Committee are open to the public. Due to space limitations, attendance may be limited to those persons who have notified the Advisory Committee Management Office in writing, at least five days prior to the meeting of their intention to attend the 24 October meeting.

3. Any members of the public may file a written statement with the Committee before, during or after the meeting. To the extent that time permits the Commission Chairman may allow public presentations of oral statements at the meeting.

4. All communications regarding this Advisory Committee should be addressed to Dr. Jeffrey J. Clarke, U.S. Army Center of Military History, Washington, DC 20005-3402.

Dated: October 1, 1992.

Jeffrey J. Clarke,

Chief Historian.

[FR Doc. 92-24382 Filed 10-7-92; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of the Meetings: October 23, 1992.

Time: 1500-1600 hour.

Place: Pentagon, Washington, DC.

Agenda: The Army Science Board (ASB) Ad Hoc Subgroup reviewing the U.S. Army Materiel Command (AMC), Research, Development and Engineering Centers (RDECs), will brief Army leadership on the study results. This meeting will be closed to the public in accordance with section 552b(c) of title 5, U.S.C., specifically subparagraph (2) and (9) thereof, and Title 5, U.S.C. appendix 2, subsection 10(d). The matters to be discussed will relate solely to the internal personnel rules and practices of the Army, and would disclose information the premature disclose of which would be likely to significantly frustrate implementation of a proposed agency action thereby precluding opening any portion of the meeting. The ASB Administrative Office, Sally Warner, may be contacted for further information at (703) 695-0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 92-24436 Filed 10-7-92; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of the Meetings: October 27, 1992.

Time: 1030-1115 hours.

Place: Pentagon.

Agenda: The Army Science Board's Systems Issue Group will meet with government and contractor representatives to discuss results of the test firings at Yuma Proving Grounds, review pressure oscillation analysis and discuss the latest design of the Regenerative Liquid Propellant Gun. This meeting will be closed to the public in accordance with section 552b(c) of title 5, U.S.C., specifically subparagraphs (1) and (4) thereof, and title 5, U.S.C., appendix 2, subsection 10(d). The classified and unclassified matters and proprietary information to be discussed is so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (703) 695-0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 92-24437 Filed 10-7-92; 8:45 am]

BILLING CODE 3710-08-M

Department of the Navy

CNO Executive Panel, Meeting

Notice was published Friday September 11, 1992, at 57 FR 41736, that the Chief of Naval Operations Executive Panel will meet on October 27-28, 1992, from 9 am to 5 pm, in Alexandria, Virginia. That Meeting has been rescheduled and will be held on October 28-29, 1992. All other information in the previous notice remains effective. In accordance with 5 U.S.C. section 552b(e)(2), the meeting change is publicly announced at the earliest practical time.

Dated: September 30, 1992.

Geoffrey P. Lyon

LtCol, United States Marine Corps, Federal Register Liaison Officer.

FR Doc. 92-24478 Filed 10-7-92; 8:45 am]

BILLING CODE 3810-AE-F

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Public Forum

AGENCY: National Assessment Governing Board; Education.

ACTION: Notice of meeting.

SUMMARY: The National Assessment Governing Board is announcing the opportunity for commentary and review of the achievement levels being considered for the 1992 writing assessment of the National Assessment of Educational Progress (NAEP). The Board, in accordance with its statutory responsibility to identify "appropriate achievement levels for each grade and subject to be tested under the National Assessment" has contracted with American College Testing, which convened a panel of writing experts to recommend writing achievement levels for grades 4, 8, and 12 to be used in reporting the 1992 NAEP. The Board intends to take final action on these recommendations at its regularly scheduled quarterly meeting on November 20, 1992. This document is intended to notify interested individuals

and organizations of their opportunity to present oral and/or written views to the Board.

DATES: November 9, 1992, and November 12, 1992.

TIME: 10 a.m. to 3 p.m.

PLACE: November 9, 1992—The Madison Hotel, 15th and M Streets, NW., Washington, DC; November 12, 1992—The Fairmont Hotel, 1717 North Akard Street, Dallas, Texas.

FOR FURTHER INFORMATION CONTACT: Mel Webb, NAEP Project Director, American College Testing, 2201 North Dodge Street, Iowa City, Iowa 52243. Telephone: 319–337–1472; or Mary Lyn Bourque, Assistant Director for Psychometrics, National Assessment Governing Board, 800 North Capitol Street, suite 825, Washington, DC 20002–4233. Telephone: 202–357–6940.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 406(i) of the General Educational Provisions Act (GEPA) as amended by section 4303 of the National Assessment of Educational Progress Improvement Act (NAEP Improvement Act), title III–C of the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (Pub. L. 100–297) (20 U.S.C. 1221e–1).

The Board is established to formulate policy guidelines and to advise the Commissioner of the National Center for Education Statistics on policies and actions needed to improve the form and use of the National Assessment of Educational Progress, and develop specifications for the design, methodology, analysis, and reporting of test results. The Board also is responsible for selecting subject areas to be assessed, identifying the objectives for each age and grade tested, and establishing standards and procedures for interstate and national comparisons. The National Assessment Governing Board will hold a public forum in Washington, DC on Monday, November 9, 1992, and a public forum in Dallas, Texas on Wednesday, November 12, 1992, to hear comments on proposed definitions of writing achievement levels for grades 4, 8, and 12 to be used in reporting the National Assessment of Educational Progress. The proposed achievement levels were prepared by the expert writing panel in accordance with the NAGB policy document "Setting Appropriate Achievement Levels for the National Assessment of Educational Progress," dated May 11, 1990, and a design developed by American College Testing and approved by the Board on January 16, 1992. The proposals include detailed descriptions of the subject-matter knowledge and skills proposed for each level.

These proposals are scheduled to be presented to the Board during its quarterly meeting in Fort Lauderdale, Florida on November 20 and 21, 1992. The text of these proposals and a description of the achievement levels-setting process may be obtained by contacting the ACT office at the address or telephone number above by 3 p.m. on November 2, 1992. However, every effort will be made to receive testimony from all persons attending the forum who wish to make a presentation. Written statements should be submitted at the forum or to the ACT office by 5 p.m. on November 12, 1992. The Board plans to analyze all comments received in response to this announcement. The results of the public comments will be used by the Board in conjunction with other information to fulfill its statutory requirement to establish achievement levels on the National Assessment.

Records are kept of all Board proceedings, and are available to public inspection at the National Assessment Governing Board, 800 North Capital Street, Suite 825, Washington, DC, from 8:30 a.m. to 5 p.m., Monday through Friday.

Dated: October 3, 1992.

Roy Truby,

Executive Director, National Assessment Governing Board.

[FR Doc. 92–24517 Filed 10–7–92; 8:45 am]

BILLING CODE 4000–01–M

National Assessment Governing Board; Public Forum

AGENCY: National Assessment Governing Board; Education.

ACTION: Notice of meeting.

SUMMARY: The National Assessment Governing Board is announcing the opportunity for commentary and review of the achievement levels being considered for the 1992 reading assessment of the National Assessment of Educational Progress (NAEP). The Board, in accordance with its statutory responsibility to identify "appropriate achievement levels for each grade and subject to be tested under the National Assessment" has contracted with American College Testing, which convened a panel of reading experts to recommend reading achievement levels for grades 4, 8, and 12 to be used in reporting the 1992 NAEP. The Board intends to take final action on these recommendations at its regularly scheduled quarterly meeting on November 20, 1992. This document is intended to notify interested individuals and organizations of their opportunity to present oral and/or written views to the Board.

DATES: October 19, 1992, and October 22, 1992.

TIME: 10 a.m. to 3 p.m.

PLACE: October 19, 1992—The Madison Hotel, 15th and M Streets, NW., Washington, DC; October 22, 1992—Hyatt Regency Hotel, 711 South Hope Street, Los Angeles, California.

FOR FURTHER INFORMATION CONTACT: Mel Webb, NAEP Project Director, American College Testing, 2201 North Dodge Street, Iowa City, Iowa, 52243. Telephone: 319–337–1472; or, Mary Lyn Bourque, Assistant Director for Psychometrics, National Assessment Governing Board, 800 North Capitol Street, Suite 825, Washington, DC, 20002–4233. Telephone: 202–357–6940.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 406(i) of the General Education Provisions Act (GEPA) as amended by section 4303 of the National Assessment of Educational Progress Improvement Act (NAEP Improvement Act), title III–C of the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (Pub. L. 100–297), (20 U.S.C. 1221e–1).

The Board is established to formulate policy guidelines and to advise the Commissioner of the National Center for Education Statistics on policies and actions needed to improve the form and use of the National Assessment of Educational Progress, and develop specifications for the design, methodology, analysis, and reporting of test results. The Board also is responsible for selecting subject areas to be assessed, identifying the objectives for each age and grade tested, and establishing standards and procedures for interstate and national comparisons. The National Assessment Governing Board will hold a public forum in Washington, DC on Monday, October 19, 1992, and a public forum in Los Angeles, California on Thursday, October 22, 1992, to hear comments on proposed definitions of reading achievement levels for grades 4, 8, and 12 to be used in reporting the National Assessment of Educational Progress. The proposed achievement levels were prepared by the expert reading panel in accordance with the NAGB policy document "Setting Appropriate Achievement Levels for the National Assessment of Educational Progress," dated May 11, 1990, and a design developed by American College Testing and approved by the Board on January

16, 1992. The proposals include detailed descriptions of the subject-matter knowledge and skills proposed for each level.

These proposals are scheduled to be presented to the Board during its quarterly meeting in Fort Lauderdale, Florida on November 20 and 21, 1992. The text of these proposals and a description of the achievement levels-setting process may be obtained by contacting the ACT office at the address or telephone number above by 3 p.m. on October 14, 1992. However, every effort will be made to receive testimony from all persons attending the forum who wish to make a presentation. Written statements should be submitted at the forum or to the ACT office by 5 p.m. on October 22, 1992. The Board plans to analyze all comments received in response to this announcement. The results of the public comments will be used by the Board in conjunction with other information to fulfill its statutory requirement to establish achievement levels on the National Assessment.

Records are kept of all Board proceedings, and are available to public inspection at the National Assessment Governing Board, 800 North Capitol Street, Suite 825, Washington, DC, from 8:30 a.m. to 5 p.m., Monday through Friday.

Dated: October 3, 1992.

Roy Truby,

Executive Director, National Assessment Governing Board.

[FR Doc. 92-24516 Filed 10-7-92; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Transmittal of Mined Geologic Disposal System (MGDS) Annotated Outline for the Preparation of a License Application, Revision 1, to U.S. Nuclear Regulatory Commission (NRC)

AGENCY: Department of Energy.

ACTION: Notice.

SUMMARY: The Department of Energy (DOE) transmitted the Mined Geologic Disposal System (MGDS) Annotated Outline for the Preparation of a License Application, Revision 1, dated September 30, 1992, to the NRC for information and guidance on September 29, 1992. The annotated outline process is the basis for developing a license application, if any, for the MGDS program. The annotated outline process is iterative, with revisions to be developed in consultation with the NRC.

FOR FURTHER INFORMATION CONTACT: For further information and to obtain a copy of the annotated outline, contact Corinne Macaluso, RW-331, Office of Civilian Radioactive Waste Management, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-2837.

Issued in Washington, DC on October 1, 1992.

John W. Bartlett,

Director, Office of Civilian Radioactive Waste Management.

[FR Doc. 92-24528 Filed 10-7-92; 8:45 am]

BILLING CODE 6450-01-M

Bonneville Power Administration

Yakima River Basin Fisheries Project; Availability and Notice of Public Meetings

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of availability and notice of public meetings.

SUMMARY: BPA is releasing a draft EIS on the Yakima River Basin Fisheries Project and is planning six public meetings on the draft EIS. The meetings will be held at the following times and locations:

Monday, October 26, 1992, 7-10 p.m., Best Western Tower Inn, 1515 George Washington Way, Richland, WA 99352.

Tuesday, October 27, 1992, 7-10 p.m., Arboretum, 1401 Arboretum Drive, Yakima, WA 98901.

Thursday, October 29, 1992, 1-4 p.m. and 7-10 p.m., Red Lion Inn—Coliseum, 1225 N. Thunderbird Way, Portland, OR 97227.

Wednesday, November 4, 1992, 7-10 p.m., Hyatt Regency—Bellevue, 900 Bellevue Way, NE., Bellevue, WA 98004.

Thursday, November 5, 1992, 7-10 p.m., Best Western—Ellensburg Inn, 1700 Canyon Road, Ellensburg, WA 98926.

BPA will be accepting written comments at the address listed below. If you need a copy of the draft EIS, please call the Public Involvement office's document request line in Portland at 800—622-4520, and request the Yakima River Basin Fisheries Project Draft EIS.

DATES: The public comment period closes December 18, 1992.

ADDRESSES: Written comments should be submitted to the public Involvement Manager, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212.

FOR FURTHER INFORMATION CONTACT: Ms. Kevin Ward, EIS Project Manager, at 503-230-5373; or the Public Involvement office, at the address listed above, 503-230-3478. Or call BPA's nationwide toll-free number, 800-622-4519. For general information on NEPA process, contact: Carol M. Borgstrom, Director, Office of NEPA Oversight (EH-25), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, 202-586-4600 or 800-472-2756. Information may also be obtained from:

Mr. Marvin Nelson, Yakima Project Office, 103 S. Third St., Yakima, Washington 98901, 509-575-5805.

Mr. George E. Bell, Lower Columbia Area Manager, Suite 243, 1500 NE. Irving Street, Portland, Oregon 97232, 503-230-4551.

Mr. Robert N. Laffel, Eugene District Manager, room 206, 211 East Seventh Avenue, Eugene, Oregon 97401, 503-465-6952.

Mr. Wayne R. Lee, Upper Columbia Area Manager, room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509-353-2518.

Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59801, 406-329-3060.

Mr. Ronald K. Rodewald, Wenatchee District Manager, P.O. Box 741, room 307, 301 Yakima Street, Wenatchee, Washington 98801, 509-662-4377, extension 379.

Mr. Terence G. Esvelt, Puget Sound Area Manager, P.O. Box C19030, Suite 400, 201 Queen Anne Avenue North, Seattle, Washington 98109-1030, 206-553-4130.

Mr. Thomas V. Wagenhoffer, Snake River Area Manager, 101 West Poplar, Walla Walla, Washington 99362, 509-522-6225.

Ms. C. Clark Leone, Idaho Falls District Manager, 1527 Hollipark Drive, Idaho Falls, Idaho 83401, 208-523-2706.

Mr. James R. Normandeau, Boise District Manager, room 450, 304 N. 8th Street, Boise, Idaho 83702, 208-334-9137

SUPPLEMENTARY INFORMATION: BPA proposes to fund several fishery related activities in the Yakima River Basin. These activities, known as the Yakima Fisheries Project (YFP), would be managed as a partnership among BPA, the State of Washington, and the Yakima Indian Nation. The YFP is a central feature of the Northwest Power Planning Council's (Council) Fish and Wildlife Program. The Council selected the Yakima River system for attention because fisheries resources are severely reduced from historic levels and because there is a significant potential for enhancement of these resources. BPA's proposed action is: (1) To fund the construction, operation, and maintenance of experimental facilities for anadromous fish; (2) to develop and carry out research activities; and (3) to gather information on supplementation

techniques. Supplementation is a strategy for building fish spawning runs by releasing artificially propagated fish into natural streams to increase natural production. Alternatives for accomplishing the proposed action combine: (1) variations of stocks to enhance; (2) numbers of salmon and steelhead to produce; and (3) types and locations of facilities. The No-Action Alternative would leave present anadromous fisheries resources in the Yakima River Basin. The preferred alternative has not yet been selected. Major issues analyzed in the draft EIS include potential impacts of the project on genetic and ecological resources in existing fish populations. The YFP is designed to operate with existing instream water flow levels and project operations would not impact water rights in the Yakima River Basin. Environmental analysis included in this draft EIS will cover operation of the planned production facilities and potential impacts from the siting and construction of acclimation facilities.

Stephen J. Wright,

Assistant Administrator for Bonneville Power Administration.

[FR Doc. 92-24529 Filed 10-7-92; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER92-575-000, et al.]

Wisconsin Electric Power Co., et al., Electric Rate, Small Power Production, and Interlocking Directorate Filings

September 29, 1992.

Take notice that the following filings have been made with the Commission:

1. Wisconsin Electric Power Co.

[Docket No. ER92-575-000]

Take notice that on September 21, 1992, Minnesota Power & Light Company tendered for filing its FERC Order No. 84 Rate Schedule, First Revised Sheet No. 1. The proposed change would decrease revenues from third-party purchase and resale transactions under FERC Order No. 84. The rate decrease is proposed to be effective as of the effective date of the Interchange Agreement between Minnesota Power & Light Company and Wisconsin Electric Power Company, which was filed on May 26, 1992 in this docket and noticed on June 1, 1992. Copies of the filing were served upon the utility's jurisdictional customers, the Public Utilities Commission of Minnesota and the Public Service Commission of Wisconsin.

Comment date: October 14, 1992, in accordance with Standard Paragraph E at the end of this notice.

2. Tampa Electric Co.

[Docket No. ER92-854-000]

Take notice that on September 24, 1992, Tampa Electric Company (Tampa Electric) tendered for filing a Letter of Commitment providing for the sale by Tampa Electric to the City of St. Cloud Electric Utilities (St. Cloud) of 10 megawatts of capacity and energy from Tampa Electric's Big Bend Station coal-fired generating resources. The Letter of Commitment is submitted as a supplement to Service Schedule D under Tampa Electric's agreement for interchange service with St. Cloud.

Tampa Electric proposes an effective date for the Letter of Commitment of the earlier of January 1, 1994, or the date that St. Cloud requests, and Tampa Electric agrees to provide, the committed capacity and energy. Accordingly, Tampa Electric requests waiver of the Commission's notice requirements.

Copies of the filing have been served on St. Cloud and the Florida Public Service Commission.

Comment date: October 14, 1992, in accordance with Standard Paragraph E at the end of this notice.

3. Louisville Gas and Electric Co.

[Docket No. ER92-853-000]

Take notice that Louisville Gas and Electric Company (LG&E), by letter dated September 21, 1992, tendered for filing a Seventh Supplemental Agreement to the interconnection agreement between Southern Indiana Gas & Electric Company and LG&E.

The Seventh Supplemental Agreement modifies the Interconnection Agreement by the deletion of Service Schedules D and E, Energy Transfer and Short Term Power, respectively. This filing also includes new Service Schedules H, J, K, L, and M, for Southern Indiana Power and Energy, Southern Indiana Delivery of Third Party Purchases, Louisville Power and Energy, Louisville Delivery of Third Party Purchases, and Diversity Power, respectively. The filing also modifies Service Schedule A, Emergency Service, Service Schedule B, Interchange (renamed Economy Energy), and redefines "Out-of-Pocket Costs".

A copy of the filing was served upon the Kentucky Public Service Commission and the Indiana Utility Regulatory Commission.

Comment date: October 14, 1992, in accordance with Standard Paragraph E at the end of this notice.

4. Wheelabrator Falls Inc.

[Docket No. ER92-849-000]

Take notice that on September 22, 1992, Wheelabrator Falls Inc. submitted for filing, pursuant to Rule 207 of the Commission's Rules of Practice and Procedure, 18 CFR 385.207, an initial rate schedule for sales to Public Service Electric and Gas Company.

Comment date: October 14, 1992, in accordance with Standard Paragraph E at the end of this notice.

5. Western Resources, Inc.

[Docket No. ER92-847-000]

Take notice that on September 21, 1992, Western Resources, Inc. (WRI) tendered for filing a proposed change to its Federal Energy Regulatory Commission Electric Service Tariff No. 208. WRI states the purpose of the change is to extend the term of the existing Electric Power Supply Contract between WRI and the City of Seneca, Kansas. The change is proposed to become effective November 20, 1992.

Copies of the filing were served upon the City of Seneca and the Kansas Corporation Commission.

Comment date: October 14, 1992, in accordance with Standard Paragraph E at the end of this notice.

6. Central Power and Light Co.

[Docket No. ER92-755-000]

Take notice that on September 21, 1992, Central Power and Light Company (CPL) tendered for filing a letter amendment to an Interconnection Agreement filed in this proceeding on July 29, 1992. The letter amendment clarifies the expenses which South Texas Electric Cooperative, Inc. (STEC) will reimburse to CPL.

Copies of the filing were served on STEC and the Public Utility Commission of Texas.

Comment date: October 14, 1992, in accordance with Standard Paragraph E at the end of this notice.

7. Louisville Gas and Electric Co.

[Docket No. ER92-848-000]

Take notice that Louisville Gas and Electric Company (LG&E), by letter dated September 21, 1992, tendered for filing a Sixth Supplemental Agreement to the interconnection agreement between Big Rivers Electric Corporation and LG&E.

The Sixth Supplemental Agreement modifies the Interconnection Agreement by the deletion of Service Schedules C and E, Short Term Power and Fuel Conservation Power and Energy, respectively. This filing also includes new Services Schedules F, G, H, J, and

K, for Big Rivers Power and Energy, Big Rivers Delivery of Third Party Purchases, Louisville Power and Energy, Louisville Delivery of Third Party Purchases, and Diversity Power, respectively. The filing also modifies Service Schedule A, Emergency Service, Service Schedule B, Interchange (renamed Economy Energy), and redefines "Out-of-Pocket Costs".

A copy of the filing was served upon the Kentucky Public Service Commission.

Comment date: October 14, 1992, in accordance with Standard Paragraph E at the end of this notice.

8. New York State Electric & Gas Corp.

[Docket No. ER92-746-000]

Take notice that on September 22, 1992, New York State Electric & Gas Corporation (NYSEG) tendered for filing, pursuant to § 35.13 of the regulations under the Federal Power Act, a proposed amendment to its filing regarding the borderline sales presently designated as Rate Schedule FERC No. 32. The proposed amendment eliminates the facilities charge initially described in January 6, 1937 letter agreement between NYSEG and CHG&E and subsequently modified in a July 24, 1958 letter agreement between the two parties.

NYSEG has sent a copy of this filing to both CHG&E and the Public Service Commission of the State of New York.

Comment date: October 14, 1992, in accordance with Standard Paragraph E at the end of this notice.

9. Philadelphia Electric Co.

[Docket Nos. ER92-632-000 and ER92-654-000]

Take notice that on September 10, 1992, Philadelphia Electric Company (PE) tendered for filing Amendment Agreements to the above mentioned Dockets.

The Amendment Agreements amend the Agreements for the sale of System Energy which PE has entered into with Allegheny Electric Cooperative, Inc. and Orange and Rockland Utilities, Inc. PE requests that the Rate Schedules become effective on the dates requested in their initial filings, August 17, 1992 for Allegheny and June 22, 1992 for O&R.

Comment date: October 14, 1992, in accordance with Standard Paragraph E at the end of this notice.

10. The Union Light, Heat and Power Co.

[Docket No. E92-61-000]

Take notice that on September 24, 1992, the Union Light, Heat and Power Company filed an application with the Federal Energy Regulatory Commission under Section 204 of the Federal Power Act requesting authorization to issue not more than $35 million of unsecured promissory notes on or before December 31, 1994, with a final maturity date no later than December 31, 1994.

Comment date: October 23, 1992, 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. 92-24430 Filed 10-7-92; 8:45 am]

BILLING CODE 6717-01-M

Application Filed With the Commission

October 2, 1992.

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection.

a. *Type of Application:* Conduit Exemption (Tendered Notice).

b. *Project No.:* 11336-000.

c. *Date Filed:* September 18, 1992.

d. *Applicant:* City of Buffalo, Wyoming.

e. *Name of Project:* Buffalo.

f. *Location:* On the City of Buffalo's water supply pipeline that draws water from Clear Creek, 2 miles west of the City, in Johnson County, Wyoming (NE ¼ of NE ¼, Sec. 5, T50N, R82W).

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Michael T. O'Grady, States Water Resources Corporation, 2424 Pioneer Avenue, Suite 204, Cheyenne, Wyoming 82001, (307) 634-7848.

i. *FERC Contact:* Hector M. Pérez at (202) 219-2843.

j. *Description of Project:* The proposed project would consist of a powerhouse containing a 245-kW unit, and other appurtenant facilities. The project would have an estimated average annual generation of 1,638,000 kilowatthours.

k. Under § 4.32(b)(7) of the Commission's regulations (18 CFR), if any resource agency, Indian Tribe, or person believes that the applicant should conduct an additional scientific study to form an adequate factual basis for a complete analysis of the application on its merits, they must file a request for the study with the Commission, not later than November 17, 1992, and must serve a copy of the request on the applicant.

Lois D. Cashell,

Secretary.

[FR Doc. 92-24411 Filed 10-7-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. JD92-09935T Oklahoma-27]

State of Oklahoma; NGPA Determination by Jurisdictional Agency Designating Tight Formation

October 1, 1992.

Take notice that on September 29, 1992, the Corporation Commission of the State of Oklahoma (Oklahoma) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Formation designated as the Cherokee Common Source of Supply, underlying Sections 24 and 25, and the Des Moines Common Source of Supply, underlying Sections 26 and 27, of Township 12 North, Range 14 West, Custer County, Oklahoma qualifies as a single designated tight formation under section 107(b) of the Natural Gas Policy Act of 1978.

The notice of determination also contains Oklahoma's findings that the referenced formation meets the requirements of the Commission's regulations set forth in 18 CFR Part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 92-24404 Filed 10-7-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ93-2-1-000]

Alabama-Tennessee Natural Gas Co.; Proposed PGA Rate Adjustment

October 2, 1992.

Take notice that on September 30, 1992, Alabama-Tennessee Natural Gas Company ("Alabama-Tennessee"), Post Office Box 918, Florence, Alabama 35631, tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet with a proposed effective date of October 1, 1992:

35th Revised Sheet No. 4

Alabama-Tennessee states that this filing is an out-of-cycle purchased gas adjustment ("PGA") filing, the purpose of which is to correlate more accurately Alabama-Tennessee's projected gas costs with the rates of its upstream pipeline supplier, Tennessee Gas Pipeline Company ("Tennessee"). Alabama-Tennessee states that on September 27, 1992, it received the Transition Gas Inventory Charge ("TGIC") commodity cost of natural gas purchases for the month of October, 1992 from Tennessee in accordance with the so-called "Cosmic Settlement" which the Federal Energy Regulatory Commission ("Commission") approved in Docket Nos. RP88-228, *et al.* According to Alabama-Tennessee, this information shows that Tennessee's sales commodity rates will increase substantially from the rates that have been in effect since September 1, 1992, and upon which Alabama-Tennessee's recent out-of-cycle quarterly PGA filing submitted on August 31, 1992 in docket No TQ93-1-1-000 ("August 31 Filing") was based. Alabama-Tennessee states that, as a result, the commodity gas costs shown in Alabama-Tennessee's August 31 Filing are significantly understated.

In addition to a waiver of § 154.22 of the Commission's Regulations so that its revised tariff sheet can be made effective as of October 1, 1992, Alabama-Tennessee has requested any other waivers of the Commission's Regulations that may be necessary to permit the tariff sheet to become effective as proposed.

Alabama-Tennessee states that copies of the tariff filing have been mailed to all of its jurisdictional sales and transportation customers and affected 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 Rule 211 or Rule 214 of the Commission's Rules of Practice and Procedure 18 CFR 385.211 and 385.214. All such motions or protests should be filed on or before October 9, 1992. 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 to the proceeding 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. 92-24418 Filed 10-7-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-237-000]

Alabama-Tennessee Natural Gas Co.; Proposed Changes in FERC Gas Tariff

October 2, 1992.

Take notice that Alabama-Tennessee Natural Gas Company ("Alabama-Tennessee"), on September 30, 1992, tendered for filing proposed changes in its FERC Gas Tariff, First Revised Volume No. 1. The proposed effective date for these tariff sheets in November 1, 1992. The proposed changes would increase revenues for jurisdictional sale for resale services by $3,181,350 annually, based on the 12-month period ending May 31, 1992, as adjusted for known and measurable changes for the period ending February 28, 1993.

According to Alabama-Tennessee, its proposed rates are based on the Commission's recently issued Order No. 636, "Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation; and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol," 57 FR 13,267 (April 16, 1992), III FERC Stats. & Regs. [Regulations Preambles] ¶30,939 (April 8, 1992), order on reh'g, Order No. 636-A, 57 FR 36,128 (August 12, 1992), III FERC Stats. & Regs. [Regulations Preambles] ¶30,950 (August 3, 1993) ("Restructuring Rule"). In particular, these tariff sheets reflect unbundled sales and transportation services and rates based on the straight fixed variable method of cost classification, allocation, and rate design. Alabama-Tennessee states that, except as required under the Restructuring Rule, these rates are also in accordance with the Commission's "Policy Statement Providing Guidance with Respect to the Designing of Rates," 47 FERC ¶61,295, order on reh'g, 48 FERC ¶61,122 (1989).

Alabama-Tennessee has requested such waiver of the Commission's Regulations as may be necessary to accept its application as proposed.

Alabama-Tennessee states that copies of the filing were served upon the company's jurisdictional customers and interested public bodies.

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, 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 9, 1992. 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 to the proceeding 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. 92-24416 Filed 10-7-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ93-1-22-000]

CNG Transmission Corp.; Notice of Proposed Change in FERC Gas Tariff

October 2, 1992.

Take notice that on September 30, 1992, CNG Transmission Corporation ("CNG") filed the following revised tariff sheets to First Revised Volume No. 1 of its FERC Gas Tariff:

Twenty-Third Revised Sheet No. 31
Fifteenth Revised Sheet No. 32
Ninteenth Revised Sheet No. 34
Fourteenth Revised Sheet No. 35

CNG requests an effective date for these sheets of October 1, 1992.

CNG states that the purpose of this filing is to authorize CNG to establish a cost-based PGA sales rate for the period October 1, 1992, until April 1, 1993, when CNG plans to implement Order No. 636. CNG states further that this transitional measure is necessary for CNG to implement the new services envisioned by the Commission in Order No. 636 and that this filing will help minimize its transition costs.

CNG states that this filing will result in a weighted average cost of gas of $1.7028 for Rate Schedules RQ, CD, and ACD for the period October 1, 1992, to April 1, 1993.

CNG has requested a waiver of the Commission's regulations requiring it to make quarterly PGA filings in December

1992, and March 1993 as well as waiver of the requirement applying the three percent test. Alternatively, CNG requests that the Commission apply the three percent test to the six-month period reflected in this filing.

CNG states that copies of this filing were served upon CNG's customers as well as interested state commissions. Also, copies of this filing are available during regular business hours at CNG's main offices in Clarksburg, West Virginia.

Any person desiring to be heard or to protest said filing should file a protest or motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 and 385.211. All motions or protests should be filed on or before October 9, 1992. Protests will be considered 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. 92–24415 Filed 10–7–92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TQ93–1–21–000 and TM93–3–21–000]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

October 2, 1992.

Take notice that Columbia Gas Transmission Corporation (Columbia) on September 30, 1992, tendered for filing the following proposed changes to its FERC Gas Tariff, First Revised Volume No. 1.

October 1, 1992

Twenty-fourth Revised Sheet No. 26
Sixteenth Revised Sheet No. 26.1
Twenty-third Revised Sheet No. 26A
Sixteenth Revised Sheet No. 26A.1
Thirteenth Revised Sheet No. 26B.1
Eighth Revised Sheet No. 26C.1
Thirteenth Revised Sheet No. 26D
Twenty-third Revised Sheet No. 163

Columbia states the sales rates set forth on Sixteenth Revised Sheet No. 26.1 reflect an increase of 27.92¢ per Dth in the commodity rate and a decrease in the demand rate of $.054 per Dth when compared with the total CDS rates reflected in its last PGA filing which was filed on September 1, 1992 with an effective date of September 2, 1992. In addition, the transportation rates set forth in Eighth Revised Sheet No. 26C.1 and Thirteenth Revised Sheet No. 26D reflect an increase in the Fuel Charge component of 0.67¢ per Dth.

Columbia states that copies of the filing is being mailed to all jurisdictional customers and affected 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, Union Center Plaza Building, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before October 9, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of Columbia's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92–24421 Filed 10–7–92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TQ93-2-21-000 and TM93-2-21-000]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

October 2, 1992.

Take notice that Columbia Gas Transmission Corporation (Columbia) on September 30, 1992, tendered for filing the following proposed changes to its FERC Gas Tariff, First Revised Volume No. 1, to be effective November 1, 1992.

Twenty-Fifth Revised Sheet No. 26
Eighteenth Revised Sheet No. 26.1
Twenty-Fourth Revised Sheet No. 26A
Eighteenth Revised Sheet No. 26A.1
Twenty-Second Revised Sheet No. 26B
Fourteenth Revised Sheet No. 26B.1
Twenty-Third Revised Sheet No. 26C
Ninth Revised Sheet No. 26C.1
Fifteenth Revised Sheet No. 26D
Twenty-Fourth Revised Sheet No. 163

Columbia states the sales rates set forth on Eighteenth Revised Sheet No. 26.1 reflect an increase of 22.04¢ per Dth in the commodity rate and an overall decrease of $0.196 per Dth in the total demand rate when compared with the total CDS rates currently in effect. The transportation rates set forth on Ninth Revised Sheet No. 26C.1 and Fifteenth Revised Sheet No. 26D reflect an increase of 0.48¢ per Dth in the Fuel Charge component.

Columbia states that copies of the filing is being mailed to all jurisdictional customers and affected 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, Union Center Plaza Building, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before October 9, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestant parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of Columbia's filing are on file with the Commisson and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-24420 Field 10-7-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ93–2–2–000]

East Tennessee Natural Gas Co.; Rate Filing

October 2, 1992.

Take notice that on September 30, 1992, East Tennessee Natural Gas Company ("East Tennessee"), submitted for filing five copies each of Twenty-Eighth Revised Sheet Nos. 4 and 5 to First Revised Volume No. 1 of its FERC Gas Tariff to be effective October 1, 1992.

East Tennessee Natural Gas Company states that the purpose of the instant filing is to implement an out-of-cycle PGA rate adjustment to East Tennessee's current rate, to be effective from October 1, 1992 to December 31, 1992. East Tennessee states that due to an unexpected increase in gas prices, it is currently unable to purchase gas at or below the rates reflected in its previously quarterly filing in Docket No. TQ–93–1–2, filed on August 31, 1992 to be effective October 1, 1992. The increase in the current adjustment is necessary to prevent substantial under-recoveries of gas costs.

East Tennessee further states that copies of the filing has been mailed to all affected customers and state regulatory commissions.

Any person desiring to be heard or to protect such filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington,

DC 20425, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before October 9, 1992. Protests will be considered by the Commission in determining appropriate action but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene; provided, however, that any person who had a previously filed a petition or intervene in this proceeding is not required to file a further petition. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-24424 Filed 10-7-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ93-1-24-000]

Equitrans, Inc.; Proposed Change in FERC Gas Tariff

October 2, 1992.

Take notice that Equitrans, Inc. (Equitrans) on September 30, 1992, tendered for filing with the Federal Energy Regulatory Commission (Commission) the following tariff sheets to its FERC Gas Tariff, Original Volume No. 1, to become effective October 1, 1992:

Thirty-Ninth Revised Sheet No. 10
Twenty-Eighth Revised Sheet No. 34

This filing implements an Out-of-Cycle Purchased Gas Cost Adjustment (PGA) to reflect (1) increased gas costs charged by Texas Eastern Transmission Corporation's (TETCO) under its Rate Schedule CD-1 filed in Docket No. TQ92-8-17 on September 29, 1992; and (2) increases in the purchased gas costs of spot market purchases and Southwest supply purchases. The filing is necessary in order to have the rates charged to Equitrans' jurisdictional customers more closely reflect the experienced cost of gas being incurred by the Applicant.

The changes proposed in this filing to the purchased gas cost adjustment under Rate Schedule PLS is an increase in the commodity cost of $0.4422 per dekatherm (Dth). The purchased gas cost adjustment to rate Schedule ISS is an increase of $0.4765 per Dth.

Pursuant to § 154.51 of the Commission's Regulations, Equitrans requests that the Commission grant any waivers necessary to permit the tariff sheets contained herein to become effective on October 1, 1992.

Equitrans states that a copy of its filing has been served upon its purchasers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 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 October 9, 1992. 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. 92-24409 Filed 10-7-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ93-1-34-000]

Florida Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

October 2, 1992.

Take notice that on September 30, 1992 Florida Gas Transmission Company (FGT) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet to be effective October 1, 1992:

Thirty-Second Revised Sheet No. 8

FGT states that the above-referenced tariff sheet is being filed to reflect an increase in FGT's cost of gas purchased from that level reflected in its last Out-of-Cycle PGA filing effective September 1, 1992 in Docket No. TQ92-6-34-000.

On August 28, 1992, FGT made a filing in its Out-of-Cycle PGA in Docket No. TQ92-6-34-000 containing a projected cost of purchased gas for the period August 1, 1992 through October 31, 1992 of $2.5088/MMBtu saturated. Subsequent to the Out-of-Cycle filing, FGT has again experienced an increase in its cost of purchased gas to a level that now exceeds the level of purchased gas cost established in FGT's last Out-of-Cycle PGA. However, FGT is precluded from adjusting its rates under Section 15.10 (Interim Adjustment Filings) of its FERC Gas Tariff to reflect a level of gas cost that exceeds the level established in its last Out-ot-Cycle PGA filing. Therefore, FGT is making the instant Out-of-Cycle PGA filing in order to reflect the increases in its cost of purchased gas to a level of $3.1538/MMBtu saturated.

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 Sections 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 9, 1992. 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. 92-24426 Filed 10-7-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ93-2-34-000]

Florida Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

October 2, 1992.

Take notice that on September 30, 1992 Florida Gas Transmission Company (FGT) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets to be effective November 1, 1992:

Thirty-Third Revised Sheet No. 8
Sixth Revised Sheet No. 160
Fifth Revised Sheet No. 222
Sixth Revised Sheet No. 223
Fourth Revised Sheet No. 224
Sixth Revised Sheet No. 225
Fifth Revised Sheet No. 226
Sixth Revised Sheet No. 227
Sixth Revised Sheet No. 228
Fifth Revised Sheet No. 229
Fifth Revised Sheet No. 230
Fourth Revised Sheet No. 231
Seventh Revised Sheet No. 232

FGT states that Thirty-Third Revised Sheet No. 8 is being filed in accordance with § 154.308 of the Commission's Regulations and pursuant to Section 15 of FGT's FERC Gas Tariff, Second Revised Volume No. 1 to reflect a decrease in FGT's jurisdictional rates due to a decrease in its average cost of gas purchased from that reflected in its Out-of-Cycle PGA filing, Docket No. TQ93-1-34-000, effective October 1, 1992.

FGT further states that its projected purchase cost of gas for the period

November, 1992 through January, 1993, shown in detail on Schedule Q1, represents a decrease from $3.1538/MMBtu saturated, as reflected in FGT's Out-of-Cycle PGA filing in Docket No. TQ93–1–34–000, effective October 1, 1992 to $3.0677/MMBtu saturated in the instant filing.

FGT is required to update its Index of Entitlements concurrently with its Quarterly PGA filing pursuant to Section 9 of the General Terms and Conditions of its Tariff and has included such changes in Fourth Revised Sheet Nos. 224 and 231, Fifth Revised Sheet Nos. 222, 226, 229, and 230, Sixth Revised Sheet Nos. 223, 225, 227, and 228, and Seventh Revised Sheet No. 232. Additionally, Sixth Revised Sheet No. 160 updates the receipt point list contained in Rate Schedule PTS–1.

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 October 9, 1992. 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. 92–24412 Filed 10–7–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ93–2–4–000]

Granite State Gas Transmission, Inc.; Proposed Changes in Rates

October 2, 1992.

Take notice that on September 30, 1992, Granite State Gas Transmission, Inc. (Granite State), 300 Friberg Parkway, Westborough, Massachusetts 01581–5039, tendered for filing with the Commission Nineteenth Revised Sheet No. 21 in its FERC Gas Tariff, Second Revised Volume No. 1, containing changes in rates for effectiveness on October 1, 1992.

According to Granite State, its filing is a revised purchased gas adjustment for the fourth quarter of 1992. Granite State further states that it filed its regular fourth quarter purchased gas cost adjustment on September 9, 1992 in Docket No. TQ93–1–4–000. It is stated that, in the short interval since its prior filing, the costs for its projected spot market purchases during the fourth quarter have risen rapidly and spot market supplies comprise approximately 73 percent of projected purchases during the quarter. According to Granite State, the revised rates in the instant filing are derived on the same quantities of projected purchases and sales as in the prior filing.

It is stated that the proposed rate changes are applicable to Granite State's jurisdictional services rendered to Bay State Gas Company and Northern Utilities, Inc. Granite State further states that copies of its filing were served upon its customers and the regulatory commissions of the States of Maine, Massachusetts and New Hampshire.

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 9, 1992. 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 to the proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92–24410 Filed 10–7–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ93–1–46–000]

Kentucky West Virginia Gas Co., Proposed Change in FERC Gas Tariff

October 2, 1992.

Take notice that Kentucky West Virginia Gas Company (Kentucky West) on September 29, 1992, tendered for filing with the Federal Energy Regulatory Commission (Commission) an Out-of-Cycle PGA filing, which includes Fortieth Revised Sheet No. 41 to its FERC Gas Tariff, Second Revised Volume No. 1, to become effective October 1, 1992. The revised tariff sheet reflects a current increase of $0.5742 per Dth in the average cost of purchased gas resulting in a Weighted Average Cost of Gas of $2.1589 per Dth.

Kentucky West states that effective October 1, 1992, pursuant to its obligations under various gas purchase contracts, it has specified a total price of $2.1700 per Dth, inclusive of all taxes and any other production-related cost add-ons, that it would pay under these contracts.

Pursuant to § 154.51 of the Commission's regulations, Kentucky West requests waiver of the thirty day notice requirement to permit the tariff sheet attched hereto to become effective on October 1, 1992. In addition, Kentucky West requests waiver of § 154.304 of the Commission's regulations and any other provisions of the Commission's regulations necessary to permit the attached tariff sheet to become effective on October 1, 1992.

Kentucky West states that, by its filing, or any request or statement made therein, it does not waive any rights to collect amounts, nor the right to collect carrying charges applicable thereto, to which it is entitled pursuant to the mandate of the United States Court of Appeals for the Fifth Circuit issued on March 6, 1986, in *Kentucky West Virginia Gas Co.* v. *FERC*, 780 F.2d 1231 (5th Cir. 1986), or to which it is or becomes entitled pursuant to any other judicial and/or administrative decisions.

Kentucky West states that a copy of its filing has been served upon each of its jurisdictional customers and interested State Commission.

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 of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before October 9, 1992. 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. 92–24425 Filed 10–7–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ93-1-25-000]

Mississippi River Transmission Corp.; Rate Change Filing

October 2, 1992.

Take notice that on September 29, 1992 Mississippi River Transmission Corporation (MRT) tendered for filing Eighty-Third Revised Sheet No. 4, and Forth-Second Revised Sheet No. 4.1 to its FERC Gas Tariff, Second Revised Volume No. 1 to be effective October 1, 1992. MRT states that the purpose of the instant filing is to reflect an out-of-cycle purchase gas cost adjustment (PGA).

MRT states that Eighty-Third Revised Sheet No. 4 and Forty-Second Revised Sheet No. 4.1 reflect an increase of 74.77 cents per MMBtu in the commodity cost of purchased gas from PGA rates filed on August 28, 1992 to be effective September 1, 1992, in Docket No. TQ92-15-25-000. MRT also states that since the August 28, 1992 filing date, MRT has experienced changes in purchase and transportation costs for its system supply that could not have been reflected in that filing under current Commission regulations.

MRT states that a copy of the filing has been mailed to each of MRT's jurisdictional sales customers and the State Commissions of Arkansas, Missouri, and Illinois.

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 of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 9, 1992. 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. 92-24427 Filed 10-7-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ93-2-16-000]

National Fuel Gas Supply Corp.; Proposed Changes in FERC Gas Tariff

October 2, 1992.

Take notice that on September 30, 1992, National Fuel Gas Supply Corporation ("National") tendered for filing the following revised tariff sheets as part of its FERC Gas Tariff, Second Revised Volume No. 1, to become effective on October 1, 1992:

(A) Twenty-Fourth Revised Sheet No. 5
(B) Alt Twenty-Fourth Revised Sheet No. 5

National states that the purpose of this filing is to implement an out-of-cycle Purchased Gas Cost Adjustment ("PGA") rate change to reflect the increased gas cost resulted from the impact of the current market price. The primary tariff sheet (A) assumes the acceptance of National's August 28th compliance filing at Docket No. RP86-136-000 *et al* whereas the alternate tariff sheet (B) assumes otherwise. However, both sheets reflect identical gas cost projection in the quarter of October 1992. National states that the primary and alternate tariff sheet reflect commodity rate at 293.46 cents per Dt and 294.21 cents per Dt respectively.

National further states that copies of this filing were served upon the Company's jurisdictional customers and the Regulatory Commissions of the States of New York, Ohio, Pennsylvania, Delaware, Massachusetts and New Jersey.

Any person desiring to be heard or to protest said filing should file a motion to invervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 or 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All such motions to intervene or protests should be filed on or before October 9, 1992. 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. 92-24406 Filed 10-7-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RS92-45-000]

Natural Gas Pipeline Company of America; Conference

October 1, 1992.

Take notice that a conference will be convened in the captioned restructuring proceeding on October 27 and 28, 1992 at the Naperville Inn, 1801 North Naper Boulevard, Naperville, Illinois 60563, (Telephone 708-505-4900). The conference will begin at 8:30 a.m. on Tuesday, October 27, 1992.

All interested parties are invited to attend. For additional information, call John A. Myler at (202) 208-0974.

Lois D. Cashell,

Secretary.

[FR Doc. 92-24402 Filed 10-7-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ93-2-59-000]

Northern Natural Gas Co.; Notice of Proposed Changes in FERC Gas Tariff

October 2, 1992.

Take notice that Northern Natural Gas Company (Northern), on September 30, 1992 tendered for filing changes in its FERC Gas Tariff, Third Revised Volume No. 1 (Volume No. 1 Tariff) and Original Volume No. 2 (Volume No. 2 Tariff).

Northern is filing the revised tariff sheets to adjust its Base Average Gas Purchase Cost in accordance with the Quarterly PGA filing requirements codified by the Commission's Order Nos. 483 and 483-A. The instant filing reflects a Base Average Gas Purchase Cost of $3.8260 per MMBtu to be effective October 1, 1992.

Northern states that copies of the filing were served upon Northern's jurisdictional sales customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 3825.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 9, 1992. 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. 92-24423 Filed 10-7-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RS92-78-000]

Sabine Pipe Line Co.; Prefiling Conference

October 1, 1992.

Take notice that a prefiling conference will be convened in this proceeding on October 22, 1992, at 1:30 p.m., in Room 2402–A, 825 North Capitol Street, NE., Washington, DC. The conference will address proposals of Sabine Pipe Line Company to comply with Order Nos. 636 and 636–A. All parties and Commission staff are invited to attend.

For additional information, contact Marc G. Denkinger at (202) 208–2215.

Lois D. Cashell,

Secretary.

[FR Doc. 92–24403 Filed 10–7–92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP89–629–021, CP90–639–012 and CP91–2206–003]

Tennessee Gas Pipeline Co.; Technical Conference

October 1, 1992.

Take notice that on October 8, 1992, the Commission staff will convene a technical conference in the above-captioned dockets at the offices of the Federal Energy Regulatory Commission, located at 825 N. Capitol Street, Washington, DC 20426 at 10 a.m., in a room to be announced.

The purpose of the technical conference is to discuss Tennessee Gas Pipeline Company's (Tennessee) proposal to include increased facility costs in its initial rates for service in these dockets.

Tennessee should be prepared to present information, by project, regarding:

- Each facility for which cost increases are being claimed specifying type of facility (e.g., a pipeline loop), the mileposts (beginning and ending), miles, diameter, horsepower, county, state, in-service date or proposed in-service date. (Separately, list original facilities in existing approved rates for New England Power Company.)
- Cost increases for each cost item of an individual facility (i.e., right-of-way, materials, installation, contingency, project development, legal fees, AFUDC, etc.) and the particular subcategories of each cost item where the cost increase occurs. For cost increases in the Iroquois/Tennessee Project, Tennessee should itemize cost increases by segments (Segments 3 and 4) and by phases (Phases I and II).
- The original cost, the cost increase (including the date these increases were incurred), and written justification for each cost increase.

Parties protesting these proposals should also be prepared to present specific information in support of their objections.

All interested parties and Commission staff are invited to attend the technical conference. For further information, contact Amy Heyman, (202) 208–0115.

Lois D. Cashell,

Secretary.

[FR Doc. 92–24405 Filed 10–7–92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ93–1–18–000]

Texas Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

October 2, 1992.

Take notice that Texas Gas Transmission Corporation (Texas Gas), on September 29, 1992 tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Sixtieth Revised Sheet No. 10
Sixtieth Revised Sheet No. 10A
Forth-first Revised Sheet No. 11
Thirty-first Revised Sheet No. 11A
Thirty-first Revised Sheet No. 11B

Texas Gas states that these tariff sheets reflect changes in purchased gas costs pursuant to an Out-of-Cycle PGA Rate Adjustment and are proposed to be effective October 1, 1992. Texas Gas further states that the proposed tariff sheets reflect a commodity rate increase of $1.0553 per MMBtu from the rates set forth in the Out-of-Cycle PGA filed July 30, 1992 (Docket No. TQ92–8–18). No changes to the demand and SGN Standby rates are proposed in this filing.

Texas Gas states that copies of the filing are being mailed to all of Texas Gas's jurisdictional sales customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capital Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such protests or motions should be filed on or before October 9, 1992. 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. 92–24429 Filed 10–7–92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ93–2–18–000]

Texas Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

October 2, 1992.

Take notice that Texas Gas Transmission Corporation (Texas Gas), on September 30, 1992, tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Sixty-first Revised Sheet No. 10
Sixty-first Revised Sheet No. 10A
Forty-second Revised Sheet No. 11
Thirty-second Revised Sheet No. 11A
Thirty-second Revised Sheet No. 11B

Texas Gas states that these tariff sheets reflect changes in purchased gas costs pursuant to a Quarterly PGA Rate Adjustment and are proposed to be effective November 1, 1992. Texas Gas further states that the proposed tariff sheets reflect a commodity rate decrease of $(.3147) per MMBtu from the rates set forth in the Out-of-Cycle PGA filed September 29, 1992 (Docket No. TQ92–9–18). No changes are proposed for the demand or SGN Standby rates.

Texas Gas states that copies of the filing are being mailed to Texas Gas's jurisdictional sales customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such protests or motions should be filed on or before October 9, 1992. 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. 92–24428 Filed 10–7–92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ93-1-17-000]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

October 2, 1992.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on September 30, 1992 Tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, six copies of the tariff sheets listed on appendix A and appendix B to the filing.

The proposed effective date of these revised tariff sheets is October 1, 1992.

Texas Eastern states that these tariff sheets are being filed pursuant to Section 23, Purchased Gas Cost Adjustment contained in the General Terms and Conditions of Texas Eastern's FERC Gas Tariff and pursuant to Order No. 483 issued November 10, 1987 in Docket No. RM86-14. As contemplated in Docket No. RM86-14 and Order No. 483, this filing constitutes an out-of-cycle PGA rate increase. Texas Eastern states that in compliance with § 154.308(b)(2) of the Commission's Regulations, a report containing detailed computations for the derivation of the current adjustment to be applied to Texas Eastern's effective rates is enclosed in the format as prescribed by FERC Form No. 542-PGA (Revised) and FERC's NOTICE OF CRITERIA FOR ACCEPTING ELECTRONIC PGA FILINGS dated April 12, 1991.

Texas Eastern states that the change proposed in this out-of-cycle PGA filing is a commodity sales rate increase of $0.5658/dth based upon the change in Texas Eastern's projected October 1992 cost of purchased gas from Texas Eastern's August 1, 1992 Out-of-cycle PGA in Docket No. TQ92-7-17 filed on July 30, 1992.

Texas Eastern states that on September 15, 1992 Texas Eastern filed substitute tariff sheets to be effective for the period beginning December 1, 1990 to-date reflecting the rates provided for in the Stipulation and Agreement in Docket No. RP88-67, *et al.* (Phase II/PCBs) filed by Texas Eastern on December 17, 1991 (PCB Settlement). The substitute tariff sheets filed herewith listed on appendix B reflect Texas Eastern's PCB settlement rates adjusted for the PGA change proposed herein.

Texas Eastern respectfully requests the Commission to accept the tariff sheets on appendix A hereto to be effective for purposes of rendering billings beginning October 1, 1992 and accept the substitute tariff sheets on Appendix B as a supplement to Texas Eastern's September 15, 1992 filing in Docket No. RP88-67 *et al.* (Phase II/PCBs) for the period beginning October 1, 1992.

Texas Eastern states that copies of its filing have been served on all Authorized Purchasers of Natural Gas from Texas Eastern, applicable state regulatory agencies and all parties on the service list in Docket Nos. RP88-67, *et al.* (Phase II/PCBs).

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 9, 1992. 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 a file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-24413 Filed 10-7-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-235-000]

United Gas Pipe Line Co.; Proposed Changes in FERC Gas Tariff

October 2, 1992.

Take notice that on September 30, 1992, United Gas Pipe Line Company ("United") tendered for filing proposed changes to its FERC Gas Tariff, Third Revised Volume No. 1, to establish rates and revenue responsibility for all jurisdictional customers on the United system effective November 1, 1992 pursuant to Section 4(e) of the Natural Gas Act ("NGA"). United states that the instant filing is made to comply with Section IV(B) of the Joint Stipulation and Agreement ("S&A") in Docket No. RP91-126, *et al.*, United anticipates an effective date of April 1, 1993, for the applicable tariff sheets assuming the Commission exercises its authority under section 4(e) of the NGA and suspends the effective date for the full five month statutory period.

United states that the filing is only made to satisfy its obligations under the S&A. United anticipates that the Commission will approve its Order No. 636 compliance filing, due November 2, 1992, on or before April 1, 1993. If the compliance filing is not approved by the Commission before April 1, 1993, the instant filing supports revised rates for its current services to be effective on that date. The base period for the filing is the twelve months ended May 31, 1992, as adjusted for known and measurable changes for the nine months ending February 29, 1993.

United states that the instant filing reflects the elimination of United's Market Response Storage and Delivery Service ("MRSDS"). MRSDS was a limited term experimental service explicitly approved by the Commission for a period expiring March 31, 1993. United further states that it intends to file to abandon its gathering facilities pursuant to section 7(b) of the NGA on or before November 2, 1992 in conjunction with its Order No. 636 filing. Accordingly, United has eliminated the allocation of general and overhead costs to the gathering functions in the instant filing in anticipation of the abandonment filing.

The filing supports a revised cost of service of $200.6 million, which is a reduction of $0.6 million from that approved by the Commission in Docket No. RP91-126. adjustments have been made to all components of the cost of service, including an adjustment to reflect the effect of FASB 106, Employers' Accounting for Postretirement Benefits Other Than Pension. United is claiming an overall rate of return of 14.14% on a capital structure consisting of 56.18% debt and 43.82% equity and an return on equity of 16%. The filing also reflects a decrease in throughput resulting from (1) anticipated reductions in sales due to the expiration of city gate customers S&A purchase commitments; (2) the elimination of MRSDS; and, (3) discounted transportation levels. united has proposed the use of the Straight Fixed Variable ("SFV") method of cost classification, allocation and rate design.

The tendered tariff sheets also reflect the expiration of MRSDS and Rate Schedule PL. United's last PL customer, Mississippi River Transmission Corporation, filed a notice of abandonment pursuant to for Order No. 490 on June 1, 1992, for effectiveness April 30, 1992.

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 the

relevant provisions of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 and 385.211. All such petitions or protests must be filed on or before October 9, 1992. Protests 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 United's September 30, 1992, rate filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-24414 Filed 10-7-92; 8:45 am]

BILLING CODE 6717-01

[Docket No. RP92-236-000]

Williston Basin Interstate Pipeline Co.; Proposed Changes in FERC Gas Tariffs

October 2, 1992.

Take notice that on September 30, 1992, Williston Basin Interstate Pipeline Company (Williston Basin), suite 300, 200 North Third Street, Bismarck, North Dakota 58501, tendered for filing revised tariff sheets to its FERC Gas Tariff.

These revised tariff sheets reflect the recalculation of rates to incorporate the fourth conversion of firm sales service to firm transportation service by a Williston Basin sales customer. Williston Basin has requested a November 1, 1992 effective date for the revised tariff sheets.

Williston Basin states that copies of the filing has been served upon Williston Basin's customer.

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 365.211 and 385.214). All such motions or protests should be filed on or before October 9, 1992. 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 to the proceeding must file a motion to intervene. Copies of the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-24422 Filed 10-7-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TQ93-1-49-000 and TM93-2-49-000]

Williston Basin Interstate Pipeline Co.; Purchased Gas Adjustment Filing

October 2, 1992.

Take notice that on September 30, 1992, Williston Basin Interstate Pipeline Company (Williston Basin), 200 North Third Street, suite 300, Bismarck, North Dakota 58501, tendered for filing as part of its FERC Gas Tariff the following revised tariff sheets:

First Revised Volume No. 1

5th Rev Alt 43rd Revised Sheet No. 10

Original Volume No. 1-A

5th Rev Alt 36th Revised Sheet No. 11
5th Rev Alt 41st Revised Sheet No. 12
3rd Rev Alt 22nd Revised Sheet No. 97A

Original Volume No. 1-B

5th Rev Alt 31st Revised Sheet No. 10
5th Rev Alt 31st Revised Sheet No. 11

Original Volume No. 2

5th Rev Alt 43rd Revised Sheet No. 10
5th Rev Alt 37th Revised Sheet No. 11B

The proposed effective date of the tariff sheets is November 1, 1992.

Williston Basin states that 5th Rev Alt 43rd Revised Sheet No. 10 (First Revised Volume No. 1) reflects a decrease in the Current Gas Cost Adjustment applicable to Rate Schedules G-1, SGS-1 and E-1 of 11.134 cents per dkt as compared to that contained in the Company's June 15, 1992 filing in Docket Nos. TA92-2-49-000 and TM92-7-49-000 which became effective August 1, 1992.

Williston Basin further states that 5th Rev Alt 36th Revised Sheet No. 11, 5th Rev Alt 41st Revised Sheet No. 12 and 3rd Rev Alt 22nd REvised Sheet No. 97A (Original Volume No. 1-A), 5th REv Alt 31st Revised Sheet Nos. 10 and 11 (Original Volume No. 1-B), 5th Rev Alt 43rd Revised Sheet No. 10 and 5th Rev Alt 37th Revised Sheet No. 11B (Original Volume No. 2) reflected revisions to the fuel reimbursement charge and percentage components of the Company's relevant gathering, transportation and storage rates as compared to that contained in the Company's June 15, 1992 filing in Docket Nos. TA92-2-49-000 and TM92-7-49-000. Such changes in the fuel reimbursement charges and percentages are a result of the changes in Williston Basin's average cost of purchased gas.

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 9, 1992. 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 to the proceeding must file a motion to intervene. Copies of the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-24419 Filed 10-7-92; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

[FE Docket No. 89-19-NG]

Wisconsin Power and Light Co.; Order Granting Interim Authority to Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of interim order.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice that on September 29, 1992, it issued DOE/FE Opinion and Order No. 362-A which temporarily extends the import authorization granted Wisconsin Power and Light Company (WPL) on December 18, 1989, in DOE/FE Opinion and Order No. 362 (1 FE ¶ 70,278). DOE extended the previous authorization beyond its expiration date of September 30, 1992, to enable WPL to continue importing up to 10,718 Mcf of gas per day from TransCanada PipeLines Limited, and up to 100,000 Mcf per day of spot market gas until DOE issues a final decision on WPL's pending import application filed September 21, 1992, in FE Docket No. 92-121-NG. The interim order ensures there will be sufficient supplies of gas for customers served by WPL's distribution system during the 1992-1993 winter heating season.

Issued in Washington, DC on October 1, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92-24527 Filed 10-7-92; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4519-5]

Agency Information Collection Activities Under OMB Review

AGENCY: Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before November 9, 1992.

FOR FURTHER INFORMATION OR TO OBTAIN A COPY OF THIS ICR, CONTACT: Sandy Farmer at EPA, (202) 260-2740.

SUPPLEMENTARY INFORMATION:

Office of Environmental Education

Title: National Environmental Education Awards Application Form (EPA No. 1622.01).

Abstract: This ICR is a new collection in support of the National Environmental Education Awards Program established by the National Environmental Education Act (NEEA) under Public Law 101-169, section 8. Each year, in accordance with the NEEA, the National Environmental Education Advisory Council (NEEAC) will select three individuals for each of four awards. The EPA Administrator will then select a single recipient for one of these awards. The four awards are: 1) the 'Theodore Roosevelt Award', 2) the 'Henry David Thoreau Award', 3) the 'Rachel Carson Award' and the 4) 'Gifford Pinchot Award'. They are to be awarded to individuals for outstanding achievements in various fields of environmental education.

Following approval of this ICR, applicants will be required to complete and submit the National Environmental Education Award Application to EPA representatives from the Office of Environmental Education (OEE). The application will gather specific information on the applicant, the applicant's achievement, and the relevance of this achievement to environmental education and to a particular award. Applicants will also be required to submit a sample of their original work and a resume.

OEE representatives will screen the applications to ensure that the basic requirements, as outlined in the NEEA, are fulfilled. The information will then be compiled and presented to the NEEAC for the selection of candidates.

Burden Statement: Public reporting burden for this collection of information is estimated to average 1 hour per response including time for reviewing instructions, searching existing data sources, gathering and maintaining data, and completing and reviewing the application.

Respondents: Eligible individuals, as described in the NEEA.

Estimated Number of Respondents: 300.

Estimated Number of Responses per Respondent: 1.

Frequency of Collection: On occasion.

Estimated Total Annual Burden on Respondents: 300 hours.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM-223Y), 401 M Street, SW., Washington, DC, 20460.

and

Tim Hunt, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th St., NW., Washington, DC, 20503.

Dated: September 30, 1992.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 92-24553 Filed 10-7-92; 8:45 am]

BILLING CODE 6560-50-F

[FRL-4519-4]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before November 9, 1992.

FOR FURTHER INFORMATION OR TO OBTAIN A COPY OF THIS ICR,CONTACT: Sandy Farmer at EPA, (202) 260-2740.

SUPPLEMENTARY INFORMATION:

Office of Water

Title: Modification of Secondary Treatment Requirements for Discharges into Marine Waters (ICR No. 0138.04)

Abstract: Section 301(h) of the Clean Water Act (CWA) states that Publicly Owned Treatment Works (POTWs) discharging pollutants into certain marine waters may apply for and be granted a waiver from secondary treatment requirements for conventional pollutants if the POTW meets particular regulatory conditions. EPA can only issue this waiver with the concurrence of the State in which the POTW is located. Section 301(h) also established a deadline of December 31, 1982 for waiver applications.

At present, EPA has received most of the information it needs to make initial decisions on waiver approvals and is receiving no new waiver applications. However, the Agency is accepting further application information from POTWs in two cases: 1) where the POTW chooses to submit a revised application and 2) where a permittee seeks renewal of an expiring permit.

To be granted a waiver, POTWs must have demonstrated that they meet nine water quality criteria and that they have established monitoring programs. Two of these criteria were recently added under sections 303(c) and 303(d) of the 1987 Water Quality Act (WQA). First, waiver applicants serving populations of 50,000 or more must demonstrate that industrial sources discharging toxic pollutants are in compliance with applicable pretreatment requirements. Second, these same respondents must demonstrate that they each have a pretreatment program which, together with the POTW's treatment process, eliminates the same amount of pollutants as would be the case if the POTW had a secondary treatment process.

States are responsible for determining compliance with two of the nine criteria. Namely, they must verify that: 1) an applicable water quality standard exists for the pollutant for which a permit modification is requested and 2) that a POTW's discharge does not bring about additional requirements for other point or nonpoint sources.

In addition, under section 401(a)(1) of the CWA, States must certify that the permits EPA issues comply with all State laws.

Burden Statement: The average burden associated with the present collection is 461 hours per response. This total includes time for searching existing data sources, gathering the data

needed, and completing and reviewing the collection of information.

Respondents: Publicly owned treatment works, States.

Estimated No. of Respondents: 63.

Estimated Total Annual Burden on Respondents: 75,093 hours.

Frequency of Collection: Variable.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM-223Y), 401 M Street, SW., Washington, DC, 20460.

and

Matt Mitchell, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th St., NW., Washington, DC, 20503.

Dated: September 30, 1992.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 92-24554 Filed 10-7-92; 8:45 am]

BILLING CODE 6560-50-F

[FRL-4520-1]

Open Meeting of the EPA Border Environmental Plan Public Advisory Committee; Meeting Agenda

INTRODUCTION: The EPA Border Environmental Plan Public Advisory Committee (the "Advisory Committee") was established on March 28, 1992 pursuant to the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2, to advise the EPA Administrator on matters concerning the Agency's involvement in the protection and enhancement of the environment within the U.S.-Mexico border area (the "Border Area"), an area extending 100 kilometers (62 miles) on either side of the U.S.-Mexico border. The Advisory Committee also makes recommendations to the EPA Administrator on the implementation of the Integrated Environmental Plan for the Mexican-U.S. Border Area (First Stage, 1992-1994) (the "Border Plan").

TIME, PLACE AND PURPOSE: The EPA Border Environmental Plan Public Advisory Committee will meet on Monday, November 9 and Tuesday, November 10, 1992 in El Paso, Texas. On Monday, November 9, the meeting will take place at the Hotel Westin Paso del Norte, 101 S. El Paso Street, El Paso, Texas 79901, and will run from 8:30 a.m. to 5 p.m., with additional discussion time until 8 p.m., if necessary. There will be a break for lunch between Noon and 2 p.m. On Tuesday, November 10, members of the Advisory Committee and interested members of the public will visit one or more U.S. "colonias" in the vicinity of El Paso, and will attend a briefing a the offices of the International Boundary and Water Commission (IBWC), located at 4171 N. Mesa, Suite 310, El Paso, Texas 79902, as set out in the agenda below. Activities will run from 9 a.m. to Noon.

The purpose of this meeting is to review the issues raised at the Santa Fe, New Mexico meeting of the Advisory Committee held in June 1992, and to determine appropriate follow-up activities.

AGENDA:

Monday, November 9, 1992

8:30-9 a.m.: Welcome; presentation of the agenda

9-10:30: Discussion of the administration of the Advisory Committee, including further discussion of and a new vote on the Steering Committee

10:30-Noon: Presentations on Border Plan related activities by EPA Regions 6 and 9; circulation of the minutes of the June 1992 meeting of the full Advisory Committee

Noon-2 p.m.: Lunch

2-4: General discussion

4-5: Summary of proceedings

5-6: Additional time for discussion (if needed)

Tuesday, November 10, 1992

9-10:30 a.m.: Visit to one or more U.S. "colonias" in the vicinity of El Paso

11-Noon: Briefing at the offices of the International Boundary and Water Commission (IBWC) on IBWC programs.

PUBLIC PARTICIPATION: The meeting will be open to the public. All persons desiring to attend are encouraged to inform Sylvia I. Correa, the Designated Federal Officer for the EPA Border Environmental Plan Public Advisory Committee, at the address or telefax numbers listed below, no later than 5 p.m. on October 28, 1992. At the November 9 session, seating for interested members of the public, which is limited, will be available on a first-come, first-served basis. There will be a sign-up sheet at the November 9 session for a limited number of interested members of the public to indicate their desire to participate in the site visit(s) and briefing in the morning of November 10, the details of which will be announced at the November 9 session. These individuals must supply their own transportation.

Public comments to the Advisory Committee can be made at any time through the submission of written statements. Written statements to be reviewed by Advisory Committee members prior to the November meeting must be received by Sylvia Correa, at the address or telefax numbers listed below, no later than 5 p.m. on October 28, 1992.

FOR FURTHER INFORMATION CONTACT: Sylvia I. Correa, Designated Federal Officer for the EPA Border Environmental Plan Public Advisory Committee, Office of International Activities, Mail Code A-106, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; telephone: (202) 260-4890; telefax: (202) 260-8512 or (202) 260-4470.

Dated: October 2, 1992.

Sylvia I. Correa,

Designated Federal Officer for the EPA Border Environmental Plan, Public Advisory Committee, Office of International Activities, U.S. Environmental Protection Agency.

[FR Doc. 92-24512 Filed 10-7-92; 8:45 am]

BILLING CODE 6560-50-M

FARM CREDIT SYSTEM INSURANCE CORPORATION

Statement of Policy on Assistance to Operating Insured System Banks

AGENCY: Farm Credit System Insurance Corporation.

ACTION: Comment period extension.

SUMMARY: On September 8, 1992 (57 FR 40912) the Farm Credit System Insurance Corporation (Corporation) published, with a request for comments, a notice of its intention to adopt a policy statement setting forth the circumstances under which financial assistance to operating institutions will be considered, and the terms and conditions which would likely be imposed in conjunction with the granting of assistance. The comment period will expire on October 8, 1992. In order to allow affected organizations additional time to respond, the Board of Directors of the Corporation extends the comment period until November 16, 1992, and invites public comment on such terms and conditions of assistance to operating insured System banks.

DATES: The comment period is extended until November 16, 1992. Comments must be submitted on or before that date.

ADDRESSES: Comments should be mailed or delivered (in triplicate) to G. Michael Dew, Director, Risk Management Division, Farm Credit System Insurance Corporation, Mclean, Virginia 22102-0826. Copies of all comments received will available for examination by interested parties in the offices of the Farm Credit System Insurance Corporation, 1501 Farm Credit Drive, McLean, Virginia.

FOR FURTHER INFORMATION CONTACT: G. Michael Dew, Director, Risk Management Division, Farm Credit System Insurance Corporation, P.O. Box 9826, McLean, VA 22102–0826, (703) 883–4385, TDD (703) 883–4455.

SUPPLEMENTARY INFORMATION: Section 5.61 of the Farm Credit Act of 1971 (the Act) provides the Farm Credit System Insurance Corporation (Corporation) with authority, in its sole discretion, to provide assistance to insured banks as that term is defined in § 5.61. Given the importance of the provisions of § 5.61, the Corporation extends the comment period until November 16, 1992, and invites public comment on the terms and conditions which would likely be imposed in conjunction with the granting of assistance to operating insured System banks.

Dated: February 9, 1992.

Curtis M. Anderson,

Secretary, Board of Directors, Farm Credit System Insurance Corporation.

Editorial Note: This document was received at the Office of the Federal Register on October 5, 1992.

[FR Doc. 92–24458 Filed 10–7–92; 8:45 am]

BILLING CODE 6710–01–M

FEDERAL COMMUNICATIONS COMMISSION

FCC to Hold En Banc Hearing Friday, October 9, 1992

October 2, 1992.

The Federal Communications Commission will hold an *en banc* hearing on Toll Fraud issues. The hearing is scheduled to begin at 9 a.m. on Friday, October 9, 1992, in room 856, at 1919 M Street, NW., Washington, DC, and will continue all day.

The hearing will be open to the public; however, seating is limited. Overflow seating will be available in rooms 315 and 535.

For more information contact Linda Dubroof, Common Carrier Bureau, at (202) 634–1800. The contact for media coverage is Steve Svab, Office of Public Affairs, at (202) 632-5050.

Issued: October 2, 1992.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92–24389 Filed 10–7–92; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Reisen GmbH, et al. Issuance of Certification (Casualty); Phoenix

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of Section 2, Public Law 89–777 (46 U.S.C. 817(d)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended: Phoenix Reisen GmbH, Unicom Management Services (Cyprus) Limited and Maxim Gorkiy Shipping Company Limited, Kolnstrasse 80, 5300 Bonn 1, Germany.

Vesel: MAXIM GORKIY.

Date: October 2, 1992.

Joseph C. Polking,

Secretary.

[FR Doc. 92–24488 Filed 10–7–92; 8:45 am]

BILLING CODE 6730–01–M

Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of section 3, Public Law 89–777 (46 U.S.C. 817(e)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended: Phoenix Reisen GmbH, Kolnstrasse 80, 5300 Bonn 1, Germany.

Vessel: MAXIM GORKIY.

Dated: October 2, 1992.

Joseph C. Polking,

Secretary.

[FR Doc. 92–24489 Filed 10–07–92; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

Board of Scientific Counselors, Agency for Toxic Substances and Disease Registry; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Agency for Toxic Substances and Disease Registry (ATSDR) announces the following committee meeting.

NAME: Board of Scientific Counselors, ATSDR.

TIMES AND DATES:

8:30 a.m.–5 p.m., November 5, 1992.

7 p.m.–9 p.m., November 5, 1992.

8:30 a.m.–3:45 p.m., November 6, 1992.

PLACE: The Westlin Peachtree Plaza Hotel, Confederate Room/Six Flags Suite, Peachtree at International Boulevard, NE., Atlanta, Georgia 30343.

STATUS: The entire meeting will be open to the public.

PURPOSE: The Board of Scientific Counselors, ATSDR, advises the Administrator, ATSDR, on ATSDR programs to ensure scientific quality, timeliness, utility, and dissemination of results. Specifically, the Board advises on the adequacy of the science in ATSDR-supported research, emerging problems that require scientific investigation, accuracy and currency of the science in ATSDR reports, and program areas to emphasize and/or to de-emphasize.

AGENDA: The agenda will include:

- Emergency response and consultation activities: Overview, issues, and Agency plan.
- Does Reconstruction: Science issues and research plans.
- Minority Health Initiative update: Waste site demographics, health conditions, health risk communication, and minorities in environmental health.
- Great Lakes Applied Research Program: Meeting of research grantees and overview of study protocols.
- Applied Research Program of the Association of Minority Health Professions Schools: Overview of ATSDR-funded research.
- Public Health Assessments: Science issues and future directions.
- ATSDR Cancer Policy Framework: Update.

Written comments are welcome and should be received by the contact person listed below prior to the opening of the meeting.

CONTACT PERSON FOR MORE INFORMATION: Charles Xintaras, Sc.D., Executive Secretary, Board of Scientific Counselors, ATSDR, Mailstop E–28, 1600 Clifton Road, NE., Atlanta, Georgia 30333, telephone 404/639–0708.

Elvin Hilyer,

Associate Director for Policy Coordination.

[FR Doc. 92–24447 Filed 10–7–92; 8:45 am]

BILLING CODE 4160–70–M

Agency For Toxic Substances and Disease Registry

[ATSDR-59]

Availability of Draft Toxicological Profiles

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Public Health Service (PHS), Department of Health and Human Services (HHS).

ACTION: Notice of availability.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA) (42 U.S.C. 9604(i)(3)) directs the Administrator of ATSDR to prepare toxicological profiles of priority hazardous substances and to revise and republish each toxicological profile as necessary. This notice announces the availability of 10 updated drafts and 5 new draft toxicological profiles prepared by ATSDR for review and comment. The original versions of the updated profiles were released for comment on August 14, 1990.

DATES: To ensure consideration, comments on these draft toxicological profiles must be received on or before February 19, 1993. Comments received after the close of the public comment period will be considered at the discretion of ATSDR based upon what is deemed to be in the best interest of the general public.

ADDRESSES: Requests for copies of the draft toxicological profiles or comments regarding the draft toxicological profiles should be sent to the attention of Ms. Susie Tucker, Division of Toxicology, Agency for Toxic Substances and Disease Registry, Mailstop E-29, 1600 Clifton Road, NE., Atlanta, Georgia 30333.

Requests for the draft toxicological profiles must be in writing. Please specify the profiled hazardous substance(s) you wish to receive. ATSDR reserves the right to provide only one copy of each profile requested, free of charge. In case of extended distribution delays, requestors will be notified.

Written comments and other data submitted in response to this notice and the draft toxicological profiles should bear the docket control number ATSDR-59. Send one copy of all comments and three copies of all supporting documents to the Division of Toxicology at the above address by the end of the comment period. All written comments and draft profiles will be available for public inspection at the ATSDR, Building 4, Executive Park Drive, Atlanta, Georgia (not a mailing address), from 8 a.m. until 4:30 p.m., Monday through Friday, except for legal holidays. Because all public comments regarding ATSDR toxicological profiles are available for public inspection, no confidential business information should be submitted in response to this notice.

FOR FURTHER INFORMATION CONTACT: Ms. Susie Tucker at the Division of Toxicology, Agency for Toxic Substances and Disease Registry, Mailstop E-29, 1600 Clifton Road, NE., Atlanta, Georgia 30333, telephone (404) 639-6300.

SUPPLEMENTARY INFORMATION: The Superfund Amendments and Reauthorization Act (SARA) (Pub. L. 99-499) amends the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund) (42 U.S.C. 9601 et seq.) by establishing certain requirements for the ATSDR and the Environmental Protection Agency (EPA) with regard to hazardous substances which are most commonly found at facilities on the CERCLA National Priorities List (NPL). Among these statutory requirements is a mandate for the Administrator of ATSDR to prepare toxicological profiles for each substance included on the priority lists of hazardous substances. These lists identified the 275 hazardous substances which both Agencies determined pose the most significant potential threat to human health. The lists were published in the **Federal Register** on April 17, 1987, (52 FR 12866); October 20, 1988, (53 FR 41280); October 26, 1989, (54 FR 43815); and October 17, 1990, (55 FR 42067). CERCLA also requires ATSDR to assure the initiation of a research program to fill data needs associated with the substances.

Section 104(i)(3) of CERCLA (42 U.S.C. 9604(i)(3)) outlines the content of these profiles. Each profile is required to include an examination, summary and interpretation of available toxicological information and epidemiologic evaluations. This information and data are to be used to ascertain the levels of significant human exposure for the substance and the associated health effects. The profiles must also include a determination of whether adequate information on the health effects of each substance is available or in the process of development. When adequate information is not available, ATSDR, in cooperation with the National Toxicology Program (NTP), is required to assure the initiation of a program of research designed to determine these health effects.

Although key studies for each of the substances were considered during the profile development process, this **Federal Register** notice seeks to solicit any additional studies, particularly unpublished data and ongoing studies, which will be evaluated for possible addition to the profiles now or in the future.

The following draft toxicological profiles are expected to be available to the public on or about October 17, 1992.

Document	Hazardous substance	CAS number
1	Acetone	67-64-1
2	Carbon Tetrachloride	56-23-5
3	Chlordane	57-74-9
4	Chlorodibenzofurans	No CAS #
5	4,4'-DDE, DDD, DDT	50-29-3, 72-54-8, 72-55-9
6	1,2-Dichloroethane	107-06-2
7	1,1-Dichloroethene	75-34-4
8	Hexachlorobutadiene	87-68-3
9	Hexachlorocyclohexanes	58-89-9, 319-84-6, 319-85-7, 319-86-8
10	4,4'-Methylenebis(2-chloroaniline) (MBOCA)	101-14-4
11	Mercury	7439-97-6
12	Methoxychlor	72-43-5
13	Pentachlorophenol	87-86-5
14	Toluene	108-88-3
15	Zinc	7440-66-6

All profiles issued as "Drafts for Public Comment" represent the agency's best efforts to provide important toxicological information on priority hazardous substances in compliance with the substantive and procedural requirements of section 104(i)(3) of CERCLA, as amended. As in the past, we are seeking public comments and additional information which may be used to supplement these profiles. ATSDR remains committed to providing a public comment period for these documents as a means to best serve public health and our constituency.

Dated: October 1, 1992.

William L. Roper,

Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 92-24442 Filed 10-7-92; 8:45 am]

BILLING CODE 4160-70-M

Centers for Disease Control

Savannah River Site Environmental Dose Reconstruction Project: Public Meetings

The National Center for Environmental Health (NCEH), Centers for Disease Control (CDC), announces the following meetings:

Name: Savannah River Site Environmental Dose Reconstruction Project.

Date: October 26, 1992; November 2, 1992; November 4, 1992.

Time: 7 p.m.–9 p.m.; 7 p.m.–9 p.m.; 7 p.m.–9 p.m.

Place: Town House Hotel, 1615 Gervais Street, Columbia, South Carolina 29201; Hilton Desoto, South Harbor View, Meeting Room, 15 East Liberty Street, Savannah, Georgia 31401; City Manager's Office, Meeting Room 101; 215 "The Alley", Aiken, South Carolina 29802.

Status: Open to the public for observation and comment, limited only by space available. The meeting rooms accommodate approximately 200 people.

Purpose: Under a Memorandum of Understanding (MOU) with the Department of Energy (DOE), the Department of Health and Human Services has been given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production and use.

An initial step in an analytic epidemiologic study for persons living offsite of a given DOE facility is the reconstruction of radiation doses due to releases from that facility. CDC is beginning such an environmental dose reconstruction for DOE's Savannah River Site near Aiken, South Carolina. A contractor has been selected to begin gathering the data necessary to perform the dose reconstruction and to provide for public involvement in all aspects of this project. The purpose of these public meetings is to introduce the contractor to the community, to outline the project for the public, and to solicit individual public comments and suggestions on all aspects of the dose reconstruction.

Agenda items are subject to change as priorities dictate.

CONTACT PERSON FOR MORE INFORMATION: Paul Renard, Radiation Studies Branch, Division of Environmental Hazards and Health Effects, NCEH, CDC, 4770 Buford Highway NE, (F-35), Atlanta, Georgia, 30341-3724, telephone 404/488-7040.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 92-24444 Filed 10-7-92; 8:45 am]

BILLING CODE 4160-16-M

Tuberculosis Transmission in Health-Care Settings; Meeting

The Centers for Disease Control (CDC) announces an open meeting to review and assess the need to revise the current CDC guidelines for reducing the risk of tuberculosis transmission in health-care settings, "Guidelines for Preventing the Transmission of Tuberculosis in Health-Care Settings, with Special Focus on HIV-Related Issues," Morbidity and Mortality Weekly Report (MMWR) 1990; 39 [No. RR-17]: 1-29.

Name: Issues in Preventing Tuberculosis Transmission in Health-Care Facilities.

Times and Dates: 8:30 a.m.–5 p.m., October 22, 1992; 8:30 a.m.–1 p.m., October 23, 1992.

Place: CDC, Auditorium B, 1600 Clifton Road, NE., Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available.

CONTACT FOR ADDITIONAL INFORMATION: Organizations and persons who wish to obtain background materials and an agenda for the meeting may contact the National Center for Infectious Diseases, CDC, 1600 Clifton Road, NE, Mailstop C-20, Atlanta, Georgia 30333, Attention: Diane Holley, telephone (404) 639-0044, FAX (404) 639-3853.

NOTIFICATION OF ATTENDANCE: If you or other representatives of your organization plan to attend the meeting, please provide name(s), organization, address, and telephone and FAX numbers to the contact shown above by October 16, 1992. There is no registration fee.

SUPPLEMENTARY INFORMATION:

A. Background

In 1990, CDC published "guidelines for Preventing the Transmission of Tuberculosis in Health-Care Settings, with Special focus on HIV-Related Issues," (MMWR 1990; 39 [No. RR-17]: 1-29). The 1990 guidelines address a variety of issues, including identification of persons with potentially infectious tuberculosis; isolation precautions for tuberculosis patients; engineering controls, such as ventilation and ultraviolet irradiation; health-care worker tuberculosis screening; and personal respiratory protection.

Recently, the National Institute for Occupational Safety and Health (NIOSH), CDC, prepared and submitted to the Occupational Safety and Health Administration a risk assessment regarding the use of personal respiratory protection in preventing tuberculosis transmission in health-care facilities ("NIOSH Recommended Guidelines for Personal Respiratory Protection of Workers in Health-Care Facilities Potentially Exposed to Tuberculosis" [September 14, 1992]).

B. Meeting

CDC will hold an open meeting on October 22-23, 1992, to review and assess the need to revise the 1990 CDC guidelines for reducing the risk of tuberculosis transmission in health-care settings. The meeting will bring together experts in tuberculosis prevention and control; nosocomial infection prevention; occupational safety and health and biosafety; as well as representatives of labor, medical, and hospital administration organizations; and other interested persons or organizations. The meeting will cover a range of issues related to tuberculosis infection control, including patient management; tuberculosis isolation precautions; engineering controls, such as ventilation and ultraviolet irradiation; health-care worker tuberculosis screening; and personal respiratory protection, including discussion of the September 14, 1992, NIOSH guidelines. Information from this meeting will be considered in assessing the need to revise the 1990 CDC guidelines.

C. Subsequent Comment Period

Written comments containing research findings, relevant data, or responses to the information presented during this open meeting will be considered by CDC if received on or before November 27, 1992. Comments should be submitted in writing to Ms. Holley at the address shown above.

D. Transcript

The proceedings of this meeting will be transcribed. Any interested person may, consistent with the orderly conduct of the meeting, record or otherwise transcribe the meeting.

Dated: October 2, 1992.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 92-24448 Filed 10-7-92; 8:45 am]

BILLING CODE 4160-18-M

National Committee on Vital and Health Statistics (NCVHS) Subcommittee on Mental Health Statistics; Meeting

Pursuant to Public Law 92-463, the National Center for Health Statistics (NCHS), Centers for Disease Control, announces the following committee meeting:

Name: NCVHS Subcommittee on Mental Health Statistics.

Time and Date: 9:30 a.m.-4 p.m., October 29, 1992.

Place: Room 337A-339A, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

Status: Open.

Purpose: The subcommittee will hold discussions around potential future subcommittee activities including the collection and analysis of institutional and person-oriented longitudinal data on children and youth with mental disorders, and recent developments in the area of disability statistics.

Contact Person for More Information: Substantive program information as well as summaries of the meeting and a roster of committee members may be obtained from Gail F. Fisher, Ph.D., Executive Secretary, NCVHS, NCHS, room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone number 301/436-7050.

Elvin Hilyer,

Associate Director for Policy Coordination Centers for Disease Control.

[FR Doc. 92-24445 Filed 10-7-92; 8:45 am]

BILLING CODE 4160-18-M

National Committee on Vital and Health Statistics (NCVHS) Subcommittee on Medical Classification Systems; Meeting

Pursuant to Public Law 92-463, the National Center for Health Statistics (NCHS), Centers for Disease Control, announces the following meeting (working session):

Name: NCVHS Subcommittee on Medical Classification Systems.

Time and Date: 9 a.m.-12 noon, November 4, 1992.

Place: Room 303A-305A, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

Status: Open.

Purpose: The subcommittee will discuss the benefits of a single procedure classification system and the subcommittee's work plan for fiscal year 1993.

Contact Person For More Information: Substantive program information as well as summaries of the meeting and a roster of committee members may be obtained from Gail F. Fisher, Ph.D., Executive Secretary, NCVHS, NCHS, room 1100, Presidentail Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone 301/436-7050.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 92-24446 Filed 10-7-92; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

[Docket No. 92N-0378; DESI 10520]

Levo-Dromoran Injection and Tablets; Drugs for Human Use; Drug Efficacy Study Implementation; Final Evaluation

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces that Levo-Dromoran (levorphanol tartrate) injection and tablets are effective for the management of pain or as a premedicant where an opioid analgesic is appropriate. FDA further announces the conditions for the approval and marketing of the drug for this use.

DATES: Revised labeling in accordance with this notice shall be put into use by December 7, 1992. Revised labeling and supplements are due on or before December 7, 1992.

ADDRESSES: Communications in response to this notice should be identified with the reference number DESI 10520, and directed to the attention of the appropriate office named below.

Revised labeling and supplements to full new drug applications (NDA's) (identify with NDA number): Pilot Drug Evaluation Staff (HFD-7), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

Original abbreviated new drug applications and supplements thereto (identify as such): Office of Generic Drugs (HFD-600), Center for Drug Evaluation and Research, Food and Drug Administration, Metropark North #2, 5600 Fishers Lane, Rockville, MD 20857.

Requests for the applicability of this notice to a specific product: Division of Drug Labeling Compliance (HFD-310), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855.

FOR FURTHER INFORMATION CONTACT: Megan L. Foster, Center for Drug Evaluation and Research (HFD-366), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-295-8041.

SUPPLEMENTARY INFORMATION:

Background

The following NDA's are the subject of this notice:

NDA 8-719 for Levo-Dromoran Injection, containing 2 milligrams per milliliter (mg/mL) levorphanol tartrate; held by Roche Pharmaceuticals (Roche), Division of Hoffmann-LaRoche, Inc., Nutley, NJ 07110.

NDA 8-720 for Levo-Dromoran Tablets, containing 2 mg levorphanol tartrate; held by Roche.

In a notice published in the **Federal Register** of July 9, 1966 (31 FR 9426), all holders of new drug applications that became effective before October 10, 1962, on the basis of a showing of safety, were requested to submit to FDA reports containing the best data available in support of the effectiveness of their products for the claimed indications. Roche, the holder of NDA's 8-719 and 8-720, did not submit data on Levo-Dromoran. Consequently, Levo-Dromoran was not included in the Drug Efficacy Study Implementation (DESI) review conducted by the National Academy of Sciences-National Research Council (NAS-NRC).

In a notice published in the **Federal Register** of November 19, 1975 (40 FR 53609), FDA invited firms that were not included in the NAS-NRC review to supplement their NDA's with data and information concerning effectiveness. Pursuant to this notice, which listed NDA's 8-719 and 8-720, Roche provided efficacy supplements in support of the use of levorphanol tartrate for the management of pain or as a premedicant. FDA has evaluated these data and determined that they provide substantial evidence of effectiveness for those indications.

Levorphanol tartrate is regarded as a new drug under section 201(p) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(p)), and an approved application under section 505 of the act (21 U.S.C. 355) is required for marketing.

In addition to the product specifically named above, this notice applies to any product that is not the subject of an approved application and is identical to the product named above. It may also be

applicable, under 21 CFR 310.6, to a similar or related drug product that is not the subject of an approved application. It is the responsibility of every drug manufacturer or distributor to review this notice to determine whether it covers any drug product that the person manufactures or distributes. Any person may request an opinion of the applicability of this notice to a specific drug product by writing to the Division of Drug Labeling Compliance (address above).

A. Effectiveness Classification

FDA has reviewed all available evidence and concludes that levorphanol tartrate injection and tablets are effective for the indications listed in the labeling conditions below.

B. Conditions for Approval and Marketing

FDA is prepared to approve abbreviated new drug applications that meet the relevant requirements of section 505(j) of the act (21 U.S.C. 355(j)), as well as the conditions described herein. The listed drug under section 505(j)(6) of the act for levorphanol tartrate injection is Roche's Levo-Dromoran Injection 2 mg/mL. The listed drug for levorphanol tartrate tablets is Roche's Levo-Dromoran Tablets 2 mg.

The agency is also prepared to approve supplements to previously approved NDA's under conditions described herein.

1. *Form of drug.* The injectable drug product contains 2 mg/mL of levorphanol tartrate and is suitable for injection, and the oral drug product contains 2 mg of levorphanol tartrate and is suitable for oral administration.

2. *Labeling conditions.* a. The label bears the statement, "Caution: Federal law prohibits dispensing without prescription."

b. The drug is labeled to comply with all requirements of the act and regulations, and the labeling bears adequate information for safe and effective use of the drug. The indication is as follows: Levorphanol tartrate is indicated for the management of pain or as a premedicant where an opioid analgesic is appropriate.

3. *Marketing status.* a. *Approved products.* Marketing of the drug products that are now the subject of an approved or effective NDA may be continued provided that, on or before December 7, 1992, the holder of the application has submitted (i) revised labeling as needed to be in accord with the labeling conditions described in this notice, and complete container labeling if current container labeling has not been submitted (this submission should be identified as "FPL for approved supplements 8719/S008 and 8720/S006"), and (ii) a supplement to provide updating information with respect to the composition, manufacture, and specifications of the drug substance and the drug product as described in 21 CFR 314.50(d)(1)(i) and (d)(1)(ii). Revised labeling in accordance with the labeling conditions described above shall be put into use on or before December 7, 1992. Approval of the revised labeling is not required before it is used.

b. *Other products.* Approval of an abbreviated new drug application must be obtained in accordance with section 505(j) of the act before marketing such products. Marketing prior to approval of a new drug application will subject such products, and those persons who caused the products to be marketed, to regulatory action.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 502, 505 (21 U.S.C. 352, 355)) and under the authority delegated to the Director of the Center for Drug Evaluation and Research (21 CFR 5.70).

Dated: September 18, 1992.

D. B. Burlington,

Acting Director, Center for Drug Evaluation and Research.

[FR Doc. 92-24450 Filed 10-7-92; 8:45 am]

BILLING CODE 4160-01-F

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Meeting; Allergy, Immunology, and Transplantation Research Committee

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Allergy, Immunology, and Transplantation Research Committee on October 27, 1992, at the Holiday Inn Crowne Plaza, 1750 Rockville Pike, Rockville, Maryland 20852.

The meeting will be open to the public from 8:15 a.m. to 10 a.m. on October 27, to discuss administrative details relating to committee business and for program review. Attendance by the public will be limited to space available. In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92-463, the meeting will be closed to the public for the review, discussion, and evaluation of individual grant applications and contract proposals from 10 a.m. until adjournment on October 27. These applications, proposals, and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Patricia Randall, Office of Research Reporting and Public Response, National Institute of Allergy and Infectious Diseases, Building 31, room 7A32, National Institutes of Health, Bethesda, Maryland 20892, telephone 301-496-5717, will provide summary of the meeting and a roster of the committee members upon request.

Dr. Mark Rohrbaugh, Scientific Review Administrator, Allergy, Immunology and Transplantation Research Committee, NIAID, NIH, Solar Building, room 4C22, Bethesda, Maryland 20892, telephone 301-496-8424, will provide substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 93.855, Immunology, Allergic and Immunologic Diseases Research, National Institutes of Health.)

Dated: September 24, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92-24433 Filed 10-7-92; 8:45 am]

BILLING CODE 4140-01-M

Division of Research Grants; Meetings

Pursuant to Public Law 92-463, notice is hereby given of the meetings of the following study sections for October through November 1992, and the individuals from whom summaries of meetings and rosters of committee members may be obtained.

These meetings will be open to the public for approximately one-half hour at the beginning of the first session of the first day of the meeting during the discussion of administrative details relating to study section business. Attendance by the public will be limited to space available. These meetings will be closed thereafter in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92-463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Office of Committee Management, Division of Research Grants, Westwood Building, National

Institutes of Health, Bethesda, Maryland 20892, telephone 301-496-7534 will furnish summaries of the meetings and rosters of committee members. Substantive program information may be obtained from each scientific review administrator, whose telephone number is provided. Since it is necessary to schedule study section meetings months in advance, it is suggested that anyone planning to attend a meeting contact the scientific review administrator to confirm the exact date, time and location. All times are a.m. unless otherwise specified.

Study section	October-November 1992 meetings	Time	Location
AIDS & Related Research 1, Dr. Sami Mayyasi, Tel. 301-496-0012.	November 9-10	8:00	Embassy Suites Hotel, Chevy Chase Pavilion, Washington, DC.
AIDS & Related Research 2, Dr. Gilbert Meier, Tel. 301-496-5191.	October 30	8:00	Holiday Inn, Chevy Chase, MD.
AIDS & Related Research 3, Dr. Marcel Pons, Tel. 301-496-7286.	October 26-28	8:00	Ramada Inn, Bethesda, MD.
AIDS & Related Research 4, Dr. Mohindar Poonian, Tel. 301-496-4666.	November 9-10	8:30	Holiday Inn, Chevy Chase, MD.
AIDS & Related Research 5, Dr. Mohindar Poonian, Tel. 301-496-4666.	November 6	8:30	Holiday Inn, Bethesda, MD.
AIDS & Related Research 6, Dr. Gilbert Meier, Tel. 301-496-5191.	November 6	8:00	Ramada Inn, Bethesda, MD.
AIDS & Related Research 7, Dr. Gilbert Meier, Tel. 301-496-5191.	November 5	8:00	Ramada Inn, Bethesda, MD.
Behavioral and Neurosciences—1, Dr. Luigi Giacometti, Tel. 301-496-5352.	November 16-18	9:00	St. James Hotel, Washington, DC.
Behavioral and Neurosciences—2, Dr. Luigi Giacometti, Tel. 301-496-5352.	November 24	8:30	St. James Hotel, Washington, DC.
Biological Sciences—1, Dr. James R. King, Tel. 301-496-1067.	November 18-20	8:30	St. James Hotel, Washington, DC.
Biological Sciences—2, Dr. Syed Amir, Tel. 301-402-2693	November 12-14	8:30	Holiday Inn, Georgetown, DC.
Biological Sciences—3, Dr. Donna Dean, Tel. 301-402-2690	November 23-24	8:30	St. James Hotel, Washington, DC.
Biomedical Sciences, Dr. Charles Baker, Tel. 301-496-7150	November 16-18	8:30	Holiday Inn, Georgetown, DC.
Clinical Sciences—1, Mrs. Jo Pelham, Tel. 301-496-7477	November 12-13	8:30	Holiday Inn, Chevy Chase, MD.
Clinical Sciences—2, Mrs. Jo Pelham, Tel. 301-496-7477	November 19-20	8:00	Clarion Hotel, New Orleans, LA.
Immunology, Virology & Pathology, Dr. Lynwood Jones, Tel. 301-496-7510.	November 18-20	8:30	Holiday Inn, Chevy Chase, MD.
International & Cooperative Projects, Dr. Donna Dean, Tel. 301-496-7600.	November 4-6	8:00	Embassy Suites Hotel, Chevy Chase Pavilion, Washington, DC.
Physiological Sciences, Dr. Nicholas Mazarella, Tel. 301-496-1069.	November 19-20	8:30	Holiday Inn, Crowne Plaza, Rockville, MD.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393-93.396, 93.837-93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 24, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92-24434 Filed 10-7-92; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. D-92-1005; FR-3199-D-01]

Amendment to the Consolidated Delegations of Authority for Housing for the Congregate Housing Services Program

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of amendment to the Consolidated Delegations of Authority for Housing.

SUMMARY: This Notice amends the Consolidated Delegations of Authority for Housing published in the **Federal Register** on May 22, 1989, at 54 FR 22033, to authorize the Assistant Secretary for Housing-Federal Housing Commissioner to administer the Congregate Housing Services Program ("CHSP") pursuant to section 802 of the National Affordable Housing Act ("NAHA") (42 U.S.C. 8011), in addition to title IV of the Housing and Community Development Act of 1978 (42 U.S.C. 8001 *et seq.*).

EFFECTIVE DATE: September 30, 1992.

FOR FURTHER INFORMATION CONTACT: Jerold S. Nachison, Elderly and Handicapped People Division, Office of Elderly and Assisted Housing, Department of Housing and Urban Development, 451 7th Street, SW., room 6122, Washington, DC 20410. Telephone (202) 708-3291. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: By Consolidated Delegations of Authority published in the **Federal Register** on May 22, 1989, at 54 FR 22033, the Secretary of Housing and Urban Development delegated to the Assistant Secretary for Housing-Federal Housing Commissioner the power and authority of the Secretary to administer the Congregate Housing Services Program ("CHSP") pursuant to title IV of the Housing and Community Development Amendments of 1978 (42 U.S.C. 8001 *et seq.*)

Section 802 of the National Affordable Housing Act ("NAHA") (42 U.S.C. 8011) established a revised Congregate Housing Services Program. The Dire Emergency Supplemental Appropriations Act of 1991 (Pub. L. 102-27) provides that all funds appropriated under the HUD Appropriations Act of 1991 (Pub. L. 101-507) and all unobligated balances of prior year appropriations available under title IV of the Housing and Community Development Amendments of 1978, shall now be available only under section 802 of NAHA. In order to assure that the Assistant Secretary for Housing-Federal Housing Commissioner has adequate authority to act under past and present law, therefore, the Secretary is amending the Consolidated Delegations of Authority for housing to include authority for the Assistant Secretary for Housing/Federal Housing Commissioner to administer the CHSP under section 802 of the NAHA, in addition to title IV of the Housing and Community Development Act of 1978, as follows:

Item 16 under Section A. Multifamily Housing, of the Consolidated Delegations of Authority dated May 22, 1989 at 54 FR 22033 is hereby amended to read as follows: "Title IV of the

Housing and Community Development Amendments of 1978 (42 U.S.C. § 8001, *et seq.*) and section 802 of the National Affordable Housing Act (42 U.S.C. 8011)."

Authority: Section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: September 30, 1992.

Jack Kemp,

Secretary of Housing and Urban Development.

[FR Doc. 92-24513 Filed 10-7-92; 8:45 am]

BILLING CODE 4210-32-M

[Docket No. D-92-1000; FR-3343-D-01]

Delegation of Authority Under the Fair Housing Act

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of delegation of authority.

SUMMARY: By this notice, the Secretary of Housing and Urban Development is delegating to the General Counsel the authority to reopen for purposes of reconsideration determinations of no reasonable cause made by the Assistant Secretary for Fair Housing and Equal Opportunity or determinations of no reasonable cause made by the Directors of the HUD Regional offices for Fair Housing and Equal Opportunity.

EFFECTIVE DATE: September 30, 1992.

FOR FURTHER INFORMATION CONTACT: Harry L. Carey, Assistant General Counsel, Fair Housing Division, Office of the General Counsel, Department of Housing and Urban Development, Room 9238, 451 Seventh Street, SW., Washington, DC 20410-2000, telephone: (202) 708-0570. (This is not a toll-free number.) A telecommunications device for hearing impaired persons (TDD) is available at 1-800-543-8294.

SUPPLEMENTARY INFORMATION: Part 103 of title 24 of the Code of Federal Regulations contains HUD's regulations governing the processing of complaints by members of the public under the Fair Housing Act. Under 24 CFR 103.400, in processing complaints under the Act, the Secretary of Housing and Urban Development has delegated to the General Counsel the authority to make determinations of whether or not reasonable cause exists to believe that discrimination has occurred and to the Assistant Secretary for Fair Housing and Equal Opportunity the authority to make determinations that no reasonable cause exists to believe that discrimination has occurred. In a redelegation of authority published in the Federal Register on January 3, 1992, at 57 FR 296, the Assistant Secretary for Fair Housing and Equal Opportunity redelegated his authority under 24 CFR 103.400 to the Directors of the HUD Regional Offices for Fair Housing and Equal Opportunity.

In this notice, the Secretary of Housing and Urban Development is delegating to the General Counsel the authority to reopen for purposes of reconsideration determinations of no reasonable cause made by the Assistant Secretary for Fair Housing and Equal Opportunity or determinations of no reasonable cause made by the Directors of the HUD Regional Offices for Fair Housing and Equal Opportunity. After such reconsideration, the General Counsel may affirm a determination that no reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, issue an independent determination that no reasonable cause exists, or issue a determination that reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur.

If, pursuant to this delegation, the General Counsel reopens for purposes of reconsideration a no reasonable cause determination, the General Counsel or his or her designee shall promptly notify all parties to the complaint.

In a notice published in a recent issue of the Federal Register (57 FR 45066, September 30, 1992), the General Counsel amended a redelegation of authority published in the Federal Register on January 25, 1991, at 56 FR 2931, which redelegated authority to Regional Counsel to make determinations of no reasonable cause in instances specified therein, to clarify that the General Counsel is authorized to reopen for purposes of reconsideration determinations of no reasonable cause made by Regional Counsel, as well as his or her own such determinations. In another notice published in a recent issue of the Federal Register (57 FR 45066, September 30, 1992), the Assistant Secretary for Fair Housing and Equal Opportunity amended a redelegation of authority published on January 3, 1992, at 57 FR 296, which redelegated authority to the Directors of the HUD Regional offices for Fair Housing and Equal Opportunity to make determinations of no reasonable cause. The amendment clarifies that the Assistant Secretary for Fair Housing and Equal Opportunity is authorized to reopen for purposes of reconsideration determinations of no reasonable cause made by the Directors of the HUD Regional Offices for Fair Housing and Equal Opportunity, as well as his or her own such determinations.

Accordingly, the Secretary of Housing and Urban Development delegates to the General Counsel the following authority:

The General Counsel is authorized to reopen for purposes of reconsideration determinations made by the Assistant Secretary for Fair Housing and Equal Opportunity or made by the Directors of HUD Regional offices for Fair Housing and Equal Opportunity that no reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur. The General Counsel may, after reconsideration, affirm a determination that no reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, issue an independent determination that no reasonable cause exists, or issue a determination that no reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur. If the General Counsel reopens for purposes of reconsideration such a no reasonable cause determination, the General Counsel or his or her designee shall promptly notify all parties to the complaint.

Authority: 42 U.S.C. 3600-3619; 42 U.S.C. 3535(d).

Dated: September 30, 1992.

Alfred A. DelliBovi,

Deputy Secretary of Housing and Urban Development.

[FR Doc. 92-24395 Filed 10-7-92; 8:45 am]

BILLING CODE 4210-32-M

[Docket No. N-92-3518; FR-3335-N-01]

"Step-Up": An Employment and Training Program for Public and Indian Housing Residents and Other Low-Income People

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of new program.

SUMMARY: The Department is announcing a new employment and training program, called Step-Up, for public and Indian housing residents and other low-income people. The program is effective immediately; any Public Housing Authorities and Indian Housing Agencies (collectively, HAs) that are interested in sponsoring a Step-Up program should contact the HUD Office of Labor Relations at the address or telephone number below. The program utilizes flexibility in Federal prevailing wage and apprenticeship regulations to provide employment and training opportunities and fundamental support services to HA residents and other low-

income persons, and can provide contractors a vehicle for demonstrating a good faith effort toward meeting Federal affirmative employment and training obligations. Developed with the cooperation of the Department of Labor and the National Association of Housing and Redevelopment Officials, the program can provide many public and Indian housing residents, and other low-income persons, first-time access to maintenance and construction job opportunities, particularly jobs on Davis-Bacon covered construction work. Apprentices spend up to one year in Step-up status, after which they must be placed in appropriate further training or career opportunity positions. (This notice is informational in nature and does not announce funding availability; however, some costs may be eligible expenditures under other existing programs of the Department.)

FOR FURTHER INFORMATION CONTACT: Richard S. Allen, Deputy Assistant to the Secretary for Labor Relations, Department of Housing and Urban Development, 451 7th Street, SW., room 7118, Washington, DC 20410; telephone (202) 708–0370 or (202) 708–9300 (TDD) (these numbers are not toll-free), or 1–800–877–8339 (TDD).

SUPPLEMENTARY INFORMATION:

Background

Step-Up is a program to provide employment, job training, and career opportunities to residents of Public Housing Agency and Indian Housing Authority (collectively, HAs) developments, and other local low-income persons. In addition to on-the-job work experience, Step-Up apprentices will receive support services that may include daycare; transportation; career, educational, financial, and other counseling; and classroom instruction to supplement work experience and develop basic learning and personal skills (e.g., the competencies and foundation skills identified by the Department of Labor Secretary's Commission on Achieving Necessary Skills (SCANS), General Education Diploma (GED) training, and literacy and English language skills). The program can also provide a framework for focusing existing social and other support services toward empowering low-income persons through employment and training. The program is unique because it facilitates the exposure of apprentices to a variety of trades, unlike traditional apprenticeship programs that concentrate on a single trade.

The program will establish a temporary (one-year maximum) first step in a longer-term training and employment continuum. The Department's Office of Labor Relations (HUD/OLR) and the National Association of Housing and Redevelopment Officials (NAHRO) will provide or coordinate technical assistance and oversight for program sponsors and participants. Local programs must develop standards that are based on the National Apprenticeship Standards (Guidelines) that were approved by the Department of Labor's Bureau of Apprenticeship and Training (BAT) for the Step-Up program. BAT, HUD/OLR, and recognized State apprenticeship agencies will assist local sponsors in developing local program standards that meet the Guidelines, and will provide registration of resultant programs and apprentices with the local BAT or State apprenticeship agency, as appropriate.

Program Requirements

(1) *Program Eligibility.* Each proposal to establish a Step-Up program will be reviewed for joint approval by the Headquarters' offices of HUD/OLR and BAT. To be approved, a program must:

(a) Provide for consultation with resident organizations concerning program implementation;

(b) Provide resident preference in recruiting and screening for apprentices;

(c) Assign to Step-Up apprentices the same tasks normally performed by regular apprentices; and

(d) Stipulate that Helpers, as that term is defined by 29 CFR 5.2(n)(4), may not be employed at the same job site as Step-Up apprentices.

(2) *Wages.* The wage rates and ratios of Step-Up apprentices to other workers will be determined and clearly identified in the locally registered apprenticeship standards. These standards may require alternate wage rates if work assignments for Step-Up apprentices will vary between those governed by Davis-Bacon Act (49 Stat. 1011) wage requirements and HUD-determined prevailing wage rates. In most cases the wage rates will be less than the beginning rate of regular-track apprentices; however, the rates may not be less than the applicable Federal or State minimum wage rate.

Apprentice wage rates established to conform to Davis-Bacon Act prevailing wage requirements must provide a progressively increasing wage rate expressed as a percentage of the journeyworker's rate. If the local Step-Up program standards are silent regarding the level of benefits to be paid, Step-Up apprentices on Davis-Bacon projects must be paid the full prevailing fringe benefit, if any, contained in the applicable wage determination.

Wage rates for work assignments that are subject to the payment of HUD-determined prevailing wage rates must be determined for the local program in consultation with HUD.

(3) *Worksites.* Apprentices can be employed directly by the HA (force account), or they may be referred to contractors working on any private or public worksite in the community, including Davis-Bacon projects. The number of Step-Up apprentices allowed at a given worksite may not exceed the ratio approved for the local Step-Up program.

Sponsors

HAs are eligible to sponsor Step-Up programs themselves or may cosponsor programs with resident management corporations and other contractors. The sponsor is responsible for organizing all of the required components to the local program. Those components will include consultation with resident organizations, recruiting apprentices, providing support services, arranging work assignments for apprentices, and monitoring the progress of each apprentice. In addition, each sponsor is encouraged to establish cooperative arrangements with construction and maintenance contractors and other employers, and with local maintenance and building and construction trades unions, and to pursue and manage career opportunities for apprentices aggressively.

The sponsor is responsible for identifying potential worksites and promoting the use of Step-Up apprentices by public and private contractors and other employers. Every effort should be made to provide apprentices with diverse and meaningful job assignments, in order to maximize the variety of work experience provided.

The sponsor is also responsible for monitoring the progress of each apprentice, including the apprentice's progress in on- and off-the-job training; counseling; the development of good work and learning habits by the apprentice; and ensuring that work performed by the apprentice meets acceptable work standards. Supervisors and trainers should be encouraged to keep the local sponsor informed of the progress and performance of the apprentices in all facets of their training.

Apprentices

(1) *Recruiting and Screening.* Sponsors can take advantage of a number of existing resources to recruit, screen, and refer apprentice candidates.

Examples include resident councils and resident management corporations, local school districts, employment offices, and Private Industry Councils (as established pursuant to section 102(a) of the Job Training Partnership Act, 29 U.S.C. 1512(a)).

A preference factor for residents must be built in to the sponsor's selection process. Applicants for apprenticeship are required to possess a high school diploma or equivalency; be actively pursuing a GED; or agree to enroll in a program leading to a GED.

(2) *Support Services.* The sponsor is responsible for identifying what support services are needed, considering local conditions and the needs of individual Step-Up apprentices. Sponsors shall seek to arrange for the provision of these services to the extent available resources allow. Examples of support services that may be needed include daycare; transportation; career, educational, financial and other counseling; classroom training to supplement on-the-job experience; literacy and language skills (e.g., English as a second language); and work clothes, tools, or other equipment that might be needed for various work assignments.

Existing agencies and organizations are normally available in most localities to coordinate support services and referrals. For example, daycare may be arranged on-site through a resident management corporation; classroom training could be provided by local schools or community colleges; and counseling could be made available through social service and human resource agencies.

(3) *Placement.* Placement is the final step of the Step-Up year for each apprentice. Successful placement can include registration in a traditional construction, maintenance, or any other apprenticeship program; registration in similar training programs; enrollment in vocational education or professional studies (e.g., community college, higher education); and employment in a skills-oriented position. Apprentices may be placed at any time during their one-year term, and must be placed at the end of one year. While the sponsor is ultimately responsible for the successful placement of each apprentice, the apprentice is expected to participate in identifying and pursuing appropriate placement opportunities.

Other Federal Requirements and Programs

(1) *Requirements.* Section 3 of the Housing and Urban Development Act of 1968 provides in part that in covered projects the Department shall require, to the greatest extent feasible, that opportunities for training and employment be given to lower income persons residing within the unit of local government or the metropolitan area (or nonmetropolitan county) in which the project is located. Furthermore, certain federally assisted contracts are also subject to the nondiscrimination and affirmative employment requirements of Executive Order 11246. The Step-Up program may provide a compliance vehicle for State and local agencies and contractors to meet these Federal affirmative employment and training obligations through the employment of Step-Up apprentices.

(2) *Linkages to Other Federal Programs.* (a) *Family Self-Sufficiency.* Step-Up also has strong linkages to Family Self-Sufficiency (FSS), an initiative enacted in section 554 of the National Affordable Housing Act (Pub. L. 101–625, approved November 28, 1990) to help residents of the Department's public and assisted housing achieve economic independence. Like Step-Up, FSS promotes the coordination of existing public and private resources to provide employment; training; and essential support services, including child care, transportation, education, and counseling. Beginning in Fiscal Year 1993, HAs that receive new allocations of public or Indian housing development funds, or Section 8 rental certificates or rental vouchers, must operate FSS programs of a size (i.e., for the same number of families) equal to the cumulative number of new units reserved. Step-Up programs operated in conjunction with FSS can greatly enhance the employment and training opportunities available to participating families.

(b) *non-HUD Programs.* A number of programs administered through other Federal agencies, including the Departments of Labor and Health and Human Services, also provide funding and technical resources for employment and training programs that seek to combine basic skills training, occupational skills training, and supportive services. These programs include the Job Opportunities and Basic Skills Training Program and similar programs authorized under the Job Training Partnership Act (29 U.S.C. 1501–1791g).

Additionally, the Department of Labor published a notice (57 FR 41016, September 8, 1992) announcing a grants competition for the Fiscal Year 1992 demonstration program under the Nontraditional Employment for Women Act (Pub. L. 102–235, approved December 12, 1991) (NEW Act). The NEW Act establishes a four-year, $6 million demonstration program to assist States in the development of exemplary programs that train and place women in nontraditional occupations, with a special focus on growth occupations with increased wage potential. This demonstration program is an outgrowth of several key initiatives undertaken by the Department of Labor, including the Secretary's Initiative to Improve Opportunities for Women in the Skilled Trades (WIST), which seeks to improve opportunities for women and minorities in the skilled trades, especially apprenticeships. Step-Up is an excellent vehicle to implement the objectives of WIST and the NEW Act, because Step-Up provides access for public housing residents (many of whom are female heads of households) to apprenticeship in construction and maintenance (skilled) occupations.

Person interested in learning more about these non-HUD programs should contact the sponsoring Federal agency directly.

Other Matters

Environmental Impact

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.20(1) of the HUD regulations, the policies and procedures contained in this notice relate only to prevailing wage and cost determinations that do not constitute a development decision that affects the physical condition of specific project areas or building sites, and, therefore, are categorically excluded from the requirements of the National Environmental Policy Act.

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 notice will not have substantial direct effects on States or their political subdivisions, or the relationship between the federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the rule is not subject to review under the Order. The notice is limited to announcing a new voluntary apprenticeship employment and training program.

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. No significant change in existing HUD policies or programs will result from publication of this notice, as those policies and programs relate to family concerns.

Authority: 42 U.S.C. 1437j(a); 42 U.S.C. 3535(d).

Dated: October 2, 1992.

Joseph A. Scudero,

Assistant to the Secretary for Labor Relations.

[FR Doc. 92-24392 Filed 10-7-92; 8:45 am]

BILLING CODE 4210-32-M

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

[Docket No. D-92-1006; FR-3351-D-01]

Amendment to the Redelegation of Authority for the Congregate Housing Services Program

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice of amendment to the redelegation of authority.

SUMMARY: This Notice amends the Redelegation of Authority published in the **Federal Register** on November 29, 1990 at 55 FR 49579, to authorize the Deputy Assistant Secretary for Multifamily Housing Programs to approve the reservation of funds to continue existing Congregate Housing Services Program ("CHSP") grants for the CHSP funded under section 802 of the National Affordable Housing Act ("NAHA") (42 U.S.C. 8011), in addition to title IV of the Housing and Community Development Act of 1978 (42 U.S.C. 8001 *et seq.*). It also rescinds the authority of the Director, Office of Elderly and Assisted Housing to approve existing CHSP grantees.

EFFECTIVE DATE: September 30, 1992.

FOR FURTHER INFORMATION CONTACT: Jerold S. Nachison, Elderly and Handicapped People Division, Office of Elderly and Assisted Housing, Department of Housing and Urban Development, 451 7th Street, SW, Room 6122, Washington, DC 20410. Telephone (202)-708-3291. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: By delegation of authority published in the **Federal Register** on November 29, 1990 at 55 FR 49579, the Assistant Secretary for Housing-Federal Housing Commissioner redelegated to the Deputy Assistant Secretary for Multifamily Housing Programs and the Director, Office of Elderly and Assisted Housing, the power and authority of the Assistant Secretary for Housing-Federal Housing Commissioner to approve the reservation of funds for extension of Congregate Housing Services Program ("CHSP") grants funded under title IV of the Housing and Community Development Amendments of 1978 (42 U.S.C. 8001 *et seq.*)

Section 802 of the National Affordable Housing Act ("NAHA") (42 U.S.C. 8011) established a revised CHSP. The Dire Emergency Supplemental Appropriations Act of 1991 (Pub. L. 102-27) provides that all funds appropriated under the HUD Appropriations Act of 1991 (Pub. L. 101-507) and all unobligated balances of prior year appropriations available under title IV of the Housing and Community Development Amendments of 1978, shall now be available only under section 802 of NAHA. In order to assure that the Deputy Assistant Secretary for Multifamily Housing Programs has adequate authority to act under past and present law, therefore, the Assistant Secretary for Housing-Federal Housing Commissioner is amending the existing redelegation to the Deputy Assistant Secretary for Multifamily Housing Programs to grant the authority to approve the reservation of funds to continue existing CHSP grants funded under section 802 of the National Affordable Housing Act ("NAHA") (42 U.S.C. 8011), as well as title IV of the Housing and Community Development Act of 1978 (42 U.S.C. 8001 *et seq.*)

The Assistant Secretary for Housing-Federal Housing Commission is also rescinding the authority of the Director, Office of Elderly and Assisted Housing to approve CHSP grantees.

In order to effectuate these changes, the Redelegation of Authority dated November 29, 1990, at 55 FR 49579, is hereby amended to read as follows:

The Assistant Secretary for Housing Commissioner redelegates to the Deputy Assistant Secretary for Multifamily Housing Programs the authority to renew or extend any existing Congregate Housing Services Program ("CHSP") grant funded under the National Affordable Housing Act (42 U.S.C. 8011) ("NAHA") or under Title IV of the Housing and Community Development Act of 1978 (42 U.S.C. § 8001 *et seq.*), after the expiration of the original multi-year grant.

Authority: Section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: September 30, 1992.

Arthur J. Hill,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 92-24518 Filed 10-7-92; 8:45 am]

BILLING CODE 4210-27-M

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. D-92-1004; FR-3308-D-01]

Redelegation of Authority for the Component of the Home Investment Partnerships (HOME) Program for Indian Tribes

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of redelegation of authority.

SUMMARY: This notice redelegates to all Regional Administrators the power and authority of the Assistant Secretary for Public and Indian Housing and the General Deputy Assistant Secretary for Public and Indian Housing with respect to the HOME Investment Partnership (HOME) Program for Indian tribes, which was delegated by the Secretary of Housing and Urban Development in the **Federal Register** on November 4, 1991, at 56 FR 56417.

EFFECTIVE DATE: September 17, 1992.

FOR FURTHER INFORMATION CONTACT: Dominic Nessi, Director, Office of Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., room 4140, Washington, DC 20410, telephone (202) 708-1015, TDD (202) 708-0850. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: This notice redelegates all the power and authority of the Assistant Secretary and the General Deputy Assistant Secretary for Public and Indian Housing to Regional Administrators for the component of the HOME Program involving Indian tribes. This power and authority was delegated by the Secretary of Housing and Urban Development to the assistant Secretary and the General Deputy Assistant Secretary for Public and Indian Housing in the **Federal Register** on November 4, 1991, at 56 FR 56417. The authority redelegated may not be redelegated further to other employees of the Department of Housing and Urban Development. This redelegation of authority does not include the power and authority to administer the

remainder of the HOME Program involving states and units of general local government, which was the subject of a delegation of authority published in the **Federal Register** on November 4, 1991, at 56 FR 56416, and two redelegations of authority published in the **Federal Register** on June 4, 1992, at 57 FR 23593.

The HOME Program is a new program authorized by the HOME Investment partnerships Act (Pub. L. 101–625, title II, 104 Stat. 4079, 4094–4128 (November 28, 1990), codified at 42 U.S.C 12721–12839. In general, under the HOME Program, funds are allocated by formula among eligible state and local governments that qualify as participating jurisdictions to develop affordable housing for low-income and very low-income families. HOME funds are also made available, on a competitive basis, to Indian tribes to develop affordable housing for low-income and very low-income families. HOME funds are also authorized for technical assistance.

The Assistant Secretary and General Deputy Assistant Secretary for Public and Indian Housing hereby redelegate the following power and authority:

Section A. Authority Redelegated

The Assistant Secretary and General Deputy Assistant Secretary for Public and Indian Housing redelegate to Regional Administrator all power and authority with respect to the HOME Investment Partnerships (HOME) Program for a Indian tribes (42 U.S.C. 12721–12939).

Section B. Authority Excepted

The authority redelegated under Section A does not include the power to sue and be sued or the power to issue or waive rules and regulations.

Section C. No Further Redelegation

The Regional Administrators may not redelegate to employees of the Department any of the power and authority delegated under this redelegation.

Authority: HOME improvement partnerships Act (42 U.S.C. 12721–12839); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: September 17, 1992.

Joseph G. Schiff,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 92–24394 Filed 10–7–92; 8:45am]

BILLING CODE 4210–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–070–0–4410–13–241A]

Grand Junction Advisory Council; Meeting

AGENCY: Bureau of Land Management, Department of Interior.

ACTION: Notice meeting.

SUMMARY: The Grand Junction District Advisory Council will meet on Tuesday, November 10, 1992. The meeting will convene at 9 a.m. in the conference room at the Bureau of Land Management Office, 2815 H Road, Grand Junction, Colorado.

SUPPLEMENTARY INFORMATION: The agenda for the meeting will include (1) introduction, (2) opening remarks by District Manager, (3) Election of Officers (Chair and Vice-chair), (4) Year long scheduling of DAC meetings, (5) Board recommendation on Hawxhurst Land Exchange—Cathie Zarlingo, (6) Follow-up on Long Term Visitors—Mike Mottice, (7) Summary of the Federal Land Exchange Facilitation Act and changes from current procedures—Rich Arcand, (8) Briefing on the Ruby Canyon management plan process—Neil Bradford, (9) Any new issue updates for board members—Area Managers, and (10) Public Comment Period. Following the Public Comment Period, the Council will move the meeting to Rabbit Valley for lunch and tour.

The meeting is open to the public. Interested persons may make oral statements to the Council between 11 and 11:30 a.m. to file written statements for the Council's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 2815 H Road, Grand Junction, Colorado, 81506 by August 15, 1992. Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the District Manager.

Minutes of the Council will be available for public inspection in the District Office thirty (30) days following the meeting.

FOR FURTHER INFORMATION CONTACT: Tim Hartzell, District Manager, Grand Junction District Office, Bureau of Land Management, 2815 H Road, Grand Junction, Colorado 81506, phone (303) 244–3000.

Tim Hartzell,

District Manager.

[FR Doc. 92–24485 Filed 10–7–92; 8:45 am]

BILLING CODE 4310–84–M

[MT–930–4210–04; MTM 80295]

Conveyance of Certain Lands in Beaverhead County, Montana, and Order Providing for Opening of Public Land in Beaverhead County; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This order will open lands reconveyed to the United States in an exchange under the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1701 et seq. (FLPMA), to the operation of the public land laws. The land that was acquired in the exchange provides access to a large block of public land adjacent to the Lima Reservoir, additional wetlands, wildlife habitat, and increased opportunity for riparian habitat improvement projects. The exchange also allows for increased management efficiency of public land in the area. No minerals were exchanged by either party. The public interest was well served through completion of this exchange.

EFFECTIVE DATE: November 16, 1992.

FOR FURTHER INFORMATION CONTACT: James Binando, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406–255–2935.

SUPPLEMENTARY INFORMATION: 1. Notice is here given that pursuant to section 206 of FLPMA the following described lands were transferred to Evan V. Huntsman, Bill G. Huntsman, and Evon W. Huntsman:

Principal Meridian, Montana

T. 14 S., R. 6 W.,
Sec. 7, lots 3 and 4, E½SW¼;
Sec. 17, NE¼NW¼;
Sec. 18, lots 1–4, inclusive, SE¼SW¼, W½SE¼;
Sec. 19, lots 1–4, inclusive, E½W½, S½S½;
Sec. 20, S½SW¼, SW¼SE¼;
Sec. 21, N½N½, SE¼NE¼;
Sec. 27, N½, SW¼;
Sec. 28, E½E½, NW¼NE¼, NW¼;
Sec. 29, N½.
T. 14 S., R. 7 W.,
Sec. 1, N½SW¼;
Sec. 12, SE¼.
Total acreage conveyed: 2,609.84 acres.

2. In exchange for the above selected land, the United States acquired the following described surface estate from Evan Huntsman, Senior, Florence M. Huntsman, and Evan V. Huntsman:

Principal Meridian, Montana

T. 13 S., R. 5 W.,
Sec. 18, SE¼SW¼, SW¼SE¼;
Sec. 19, W½E½, E½NW¼, NE¼SW¼.
T. 14 S., R. 6 W.,
Sec. 24, W½SW¼, SE¼SE¼;
Sec. 25, NE¼.

T. 9 S., R. 11 W.,
Sec. 3, S½;
Sec. 10, N½;
Sec. 14, SW¼NE¼, NW¼, N½SW¼, SE¼SW¼, SE¼;
Sec. 15, SW¼NE¼;
Sec. 23, NW¼NE¼, E½NW¼.
Containing 1,920.00 acres, more or less.

3. The value of the Federal public land was appraised at $143,000 and the private land was appraised at $132,000. An equalization payment was made to the United States for $11,000.

4. At 9 a.m. on November 16, 1992 the lands described in paragraph 2 above that were conveyed to the United States will be opened only to the operation of the public land laws generally, subject to valid existing rights and requirements of applicable law. All valid applications received at or prior to 9 a.m. on November 16, 1992, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

Dated: September 30, 1992.

James Binando,

Chief, Branch of Lands.

[FR Doc. 92-24472 Filed 10-7-92; 8:45 am]

BILLING CODE 4310-DN-M

[OR-943-4212-13; GP2-469; OR-43988]

Conveyance of Public Lands; Order Providing for Opening of Lands; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action informs the public of the conveyance of 2,274.76 acres of public lands out of Federal ownership. This action will also open 11,711.42 acres of reconveyed lands to surface entry, and 2,920 acres to mining and mineral leasing. Of the balance, the minerals in 2,120 acres have been and continue to be open to mining and mineral leasing, and the minerals in 6,671.42 acres are not in Federal ownership.

EFFECTIVE DATE: November 15, 1992.

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

SUPPLEMENTARY INFORMATION:

1. Notice is hereby given that in an exchange of lands made pursuant to Section 206 of the Act of October 21, 1976, 43 U.S.C. 1716, a patent has been issued transferring 2,274.76 acres in Crook, Harney, and Wheeler Counties, Oregon, from Federal to private ownership.

2. In the exchange, the following described lands have been reconveyed to the United States:

Willamette Meridan

T. 10 S., R. 20 E.,
Sec. 13;
Sec. 14, NE¼, NE¼NW¼, and E½SE¼;
Sec. 15, 21, and 23;
Sec. 24, W½NW¼ and N½SW¼;
Sec. 28, SW¼NW¼ and NW¼SW¼;
Sec. 29, E½E½, NW¼, N½SW¼, SE¼SW¼, and SW¼SE¼;
Sec. 32, NW¼NE¼ and S½;
Sec. 33, NE¼NE¼.
T. 10 S., R. 21 E.,
Sec. 14, W½E½, S½NW¼, and SW¼;
Sec. 15, S½NE¼ and SE¼;
Secs. 16 and 17;
Sec. 19, lots 1, 2, 3, and 4, E½, and E½W½;
Sec. 21, W½E½, W½, and SE¼SE¼;
Sec. 22, N½N½, SW¼NW¼, and S½;
Sec. 23, E½NE¼, NW¼NW¼, S½NW¼, and S½;
Sec. 26;
Sec. 27, N½, SW¼, and E½SE¼;
Secs. 28, 29, and 33;
Sec. 35, N½, N½S½, and SE¼SE¼.

Excepting from the foregoing lands those portions thereof lying within the limits of the Bridge County Road No. 14, the Twickenham Bridge Creek Cut-Off County Road No. 20, and the Girds Creek County Road No. 18 rights-of-way.

The areas described aggregate approximately 11,711.42 acres in Wheeler County.

3. At 8:30 a.m., on November 15, 1992, the lands described in paragraph 2 will be opened to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid existing applications received at or prior to 8:30 a.m., on November 15, 1992, will be considered as simultaneously filed at that time. Those received thereafter will be considered in the order of filing.

4. At 8:30 a.m., on November 15, 1992, the following described lands will be opened to location and entry under the United States mining laws. Appropriation of land under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 1716, Sec. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts:

Willamette Meridian

T. 10 S., R. 20 E.,
Sec. 14, NE¼, NE¼NW¼, and E½SE¼;
Sec. 24, W½NW¼ and N½SW¼;
Sec. 28, SW¼NW¼ and NW¼SW¼;
Sec. 29, E½E½, E½NW¼, N½SW¼, SE¼SW¼, and SW¼SE¼;
Sec. 32, NW¼NE¼;
T. 10 S., R. 21 E.,
Sec. 14, W½E½, SE¼NW¼, E½SW¼, and SW¼SW¼;
Sec. 16;
Sec. 22, N½N½, SW¼NW¼, N½S½, and SE¼SW¼;
Sec. 23, E½E½, W½NW¼, and NW¼SW¼;
Sec. 26, E½NE¼, SW¼NW¼, NE¼SW¼, and NE¼SE¼;
Sec. 27, SW¼NE¼ and E½NW¼.

5. At 8:30 a.m., on November 15, 1992, the lands described in paragraph 4 will be opened to applications and offers under the mineral leasing laws.

Dated: September 30, 1992.

Robert E. Mollohan,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 92-24476 Filed 10-7-92; 8:45 am]

BILLING CODE 4310-33-M

[OR-943-4212-13; GP2-470; WASH-04473]

Order Providing for Opening of Public Land; Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action will open 144 acres of reconveyed land to surface entry subject to the provisions of section 24 of the Federal Power Act and mining. The land has been and continues to be open to mineral leasing.

EFFECTIVE DATE: November 15, 1992.

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

SUPPLEMENTARY INFORMATION: Notice is hereby given that pursuant to the Recreation and Public Purposes Act of June 14, 1926 (44 U.S.C. 741), as amended and supplemented (43 U.S.C. 869 et seq), the following described land has been voluntarily reconveyed to the United States:

Willamette Meridian

T. 40 N., R. 26 E.,
Sec. 13, lots 4, 5, 6, and 7.
The area described contains 144 acres in Okanogan County.

At 8:30 a.m. on November 15, 1992, the above described land will be opened to operation of the public land laws generally, subject to valid existing rights, the provision of existing withdrawals, and segregation of record

and the requirements of applicable law. All valid applications received at or prior to 8:30 a.m., on November 15, 1992, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

At 8:30 a.m., on November 15, 1992, the above described land will be opened to location and entry under the United States mining laws, subject to the provisions of existing withdrawals. Appropriation of land under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 1716, Sec. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: September 30, 1992.

Robert E. Mollohan,

Chief, Branch of Lands and Minerals Operations

[FR Doc. 92-24475 Filed 10-7-92; 8:45 am]

BILLING CODE 4310-33-M

[WY-940-4730-12]

Filing of Plats of Survey; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of the following described lands are scheduled to be officially filed in the Wyoming State Office, Cheyenne, Wyoming, thirty (30) calendar days from the date of this publication.

Sixth Principal Meridian, Wyoming

T. 51 N., R. 68 W., accepted September 30, 1992
T. 52 N., R. 68 W., accepted September 30, 1992
T. 24 N., R. 119 W., accepted September 30, 1992

Sixth Principal Meridian, Nebraska

T. 27 N., R. 5 E., accepted September 30, 1992
T. 27 N., R. 6 E., accepted September 30, 1992

If protests against a survey, as shown on any of the above plats, are received prior to the official filing, the filing will be stayed pending consideration of the protest(s) and or appeal(s). A plat will not be officially filed until after disposition of protest(s) and or appeal(s). These plats will be placed in the open files of the Wyoming State Office, Bureau of Land Management, 2515 Warren Ave., Cheyenne, Wyoming, and will be available to the public as a matter of information only. Copies of the plats will be made available upon request and prepayment of the reproduction fee of $2.00 per copy.

A person or party who wishes to protest a survey must file with the State Director, Bureau of Land Management, Cheyenne, Wyoming, a notice of protest prior to thirty (30) calendar days from the date of this publication. If the protest notice did not include a statement of reasons for the protest, the protestant shall file such a statement with the State Director within thirty (30) calendar days after the notice of protest was filed.

The above-listed plats represent dependent resurveys and subdivisions.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, P.O. Box 1828, 2515 Warren Avenue, Cheyenne, Wyoming 82003.

Dated: September 30, 1992.

John P. Lee, Chief,

Branch of Cadastral Survey.

[FR Doc. 92-24480 Filed 10-7-92; 8:45 am]

BILLING CODE 4310-22-M

[NM-920-4214-10; NMNM 86230]

Proposed Withdrawal and Opportunity for Public Meeting; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to withdraw 2,845.88 acres of public land in Taos County to protect the Orilla Verde Recreation Area. This notice closes the land for up to 2 years from surface entry and mining. The land will remain open to mineral leasing.

DATES: Comments and requests for a public meeting must be received by November 9, 1992.

ADDRESSES: Comments and meeting requests should be sent to the New Mexico State Director, BLM, P.O. Box 27115, Santa Fe, New Mexico, 87502-7115.

FOR FURTHER INFORMATION CONTACT: Georgiana E. Armijo, BLM New Mexico State Office, 505-438-7594.

SUPPLEMENTARY INFORMATION: On September 21, 1992, a petition was approved allowing the Bureau of Land Management to file an application to withdraw the following described public land from settlement, sale, location, or entry under the general land laws, including the mining laws subject to valid existing rights:

New Mexico Principal Meridian

T. 24 N., R. 11 E.,
Sec. 2, SE¼SW¼;
Sec. 10, lots 1 to 4, inclusive, NE¼NE¼, and NW¼SE¼;
Sec. 11, lots 1 to 4, inclusive;
Sec. 14, lots 1 to 3, inclusive, SE¼SW¼, and W½SW¼;
Sec. 15, lots 1 to 7, inclusive, S½NE¼, E½SW¼, and SE¼;
Sec. 16, lots 1 and 2, SE¼NE¼, SE¼SW¼, SW¼SE¼, and N½SE¼;
Sec. 20, E½SE¼;
Sec. 21, lots 1 to 10, inclusive, N½SW¼, E½SE¼, and NW¼;
Sec. 22, W½;
Sec. 28, lots 1 to 2, inclusive, SW¼NW¼, E½NW¼, and NE¼;
Sec. 29, lots 1 to 4, inclusive, NW¼NE¼, and NE¼NW¼.

The area described contains 2,845.88 acres in Taos County.

The purpose of the proposed withdrawal is to protect the Orilla Verde Recreation Area.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the New Mexico State Director of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the New Mexico State Director within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary uses which may be permitted during this segregative period are licenses, permits, cooperative agreements, or discretionary land use authorizations, but only with the approval of an authorized officer of the Bureau of Land Management.

Dated: September 29, 1992.

Monte G. Jordan,

Associate State Director.

[FR Doc. 92–24479 Filed 10–8–92; 8:45 am]

BILLING CODE 4310–FB–M

Fish and Wildlife Service

Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

PRT–771629

Applicant: F.M. Driscoll, Kelso, WA.

The applicant requests a permit to import five pairs of captive-hatched white-eared pheasants (*Crossoptilon crossoptilon*) from Robert Ian Henderson, Stocksfield-On-Tyne, England, to obtain new breeding stock for enhancement of propagation and survival of the species.

PRT–772489

Applicant: F.M. Driscoll, Kelso, WA.

The applicant requests a permit to export one pair each of captive-hatched brown-eared pheasants (*Crossoptilon mantchuricum*) and Elliot's pheasants (*Syrmaticus ellioti*) to Michel Klat, Reading, England, for enhancement of propagation and survival of the species.

PRT–772488

Applicant: James Duffy, Foster, RI.

The applicant requests a permit to import a sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*) culled from the captive herd maintained by J. Van Druten, Riekertsfontein, Victoria-West, South Africa, for the purpose of enhancement of survival of the species.

PRT–772298

Applicant: Gladys Porter Zoo, Brownsville, TX

The applicant requests a permit to export five captive-hatched Philippine crocodiles. (*Crocodylus novaeguineae mindorensis*) to Silliman University, Philippines, for captive breeding purposes.

PRT–772452

Applicant: Richard Haskins, S. San Francisco, CA.

The applicant requests a permit to import a sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*) culled from the captive herd maintained by T.P. Erasmus, "Mariendal", Kroonstad, Orange Free State, South Africa, for the purpose of enhancement of survival of the species.

PRT–767310

Applicant: Hunter Schuehle, San Antonio, TX.

The applicant requests a permit to authorize interstate and foreign commerce and export of excess male red lechwe (*Kobus leche*), dama gazelle (*Gazella dama* supp.), barasingha (*Cervus duvavcel*), elds deer (*Cervus eldi*) and Arabian oryx (*Oryx leucoryx*) culled from his captive herd for the purpose of enhancement of propagation and survival of the species.

PRT–772637

Applicant: Racine Zoo, Racine, WI.

The applicant requests a permit to reimport one female Asian elephant (*Elephus maximus*) from the African Lion Safari, Cambridge, Ontario, Canada, for educational purposes aimed at the conservation of the species.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review by any party who submits a written request for a copy of such documents to, or by appointment during normal business hours (7:45–4:15) in, the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: October 2, 1992.

Margaret Tieger,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 92–24391 Filed 10–7–92; 8:45 am]

BILLING CODE 4310–55–M

U.S. Geological Survey

Land Processes Distributed Active Archive Center (DAAC) Science Advisory Panel Meeting

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, the Earth Observing System (EOS) Land Processes DAAC Science Advisory Panel will meet at the U.S. Geological Survey Earth Resources Observation System (EROS) Data Center near Sioux Falls, South Dakota. The Panel, comprised of scientists from academic and government institutions, will provide Land Processes DAAC management with advice and consultation on a broad range of scientific and technical topics relevant to the development and operation of DAAC systems and capabilities.

Topics to be reviewed and discussed by the Panel include FY 1992 Land Processes DAAC activities, FY 1993 planned activities, EOS Data and Information System (EOSDIS) development, topographic and other ancillary data requirements, common test sites for pre-EOS science investigations, data set validation and peer review, and other.

DATES: November 4–6, 1992, commencing at 8:30 a.m. November 4 and adjourning the 12 noon on November 6.

FOR FURTHER INFORMATION CONTACT: Dr. Bryan Dailey, Land Processes DAAC Project Scientist, EROS Data Center, Sioux Falls, SD, 57198 at (605) 594–6001.

SUPPLEMENTARY INFORMATION: Meetings of the Land Processes DAAC Science Advisory Panel are open to the public.

Dated: October 1, 1992.

Dallas L. Peck,

Director, U.S. Geological Survey.

[FR Doc. 92–24461 Filed 10–7–92; 8:45 am]

BILLING CODE 4310–31–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–167 (Sub-No. 1105x)]

Consolidated Rail Corp.; Abandonments Exemption; in Centerville, IN

Applicant has filed a notice of exemption under 49 CFR 1152 subpart F—*Exempt Abandonment* to abandon its 5.2 mile line of railroad from approximately milepost 121.3, in Richmond, IN to approximately milepost 126.5, in Centerville, IN.

Applicant has certified that: (1) No local or overhead traffic has moved over the line for at least 2 years; (2) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (3) the requirements at 49 CFR 1105.12 (newspaper publication) and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on November 7, 1992 (unless stayed). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file offers of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by October 19, 1992.[3] Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by October 28, 1992, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Robert S. Natalini, Consolidated Rail Corporation, Two Commerce Square, 2001 Market St., Philadelphia, PA 19101–1416.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by October 13, 1992. Interested persons may obtain a copy of the EA from SEE by writing to it (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: October 1, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–24515 Filed 10–7–92; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 32156]

Southern Pacific Transportation Co.; Merger Exemption; Northwestern Pacific Railroad Co. and Visalia Electric Co.

Southern Pacific Transportation Company (SPC) and its wholly owned subsidiaries, Northwestern Pacific Railroad Company (NWP) and Visalia Electric Company (VE), filed a notice of exemption to merge SPC's subsidiary corporations into SPC, with SPC as the surviving corporation. Under the plan of merger, SPC will acquire all of the assets and assume all liabilities and obligations of its subsidiaries. The merger will be consummated on or after October 1, 1992.

The transaction involves the merger of companies within a corporate family and is specifically exempted from the necessity of prior review and approval under 49 CFR 1180.2(d)(3). The merger will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family.

To ensure that all employees who may be affected by the transaction are given the minimum protection under 49 U.S.C. 10505(g)(2) and 11347, the labor conditions set forth in *New York Dock Ry.—Conntrol—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979), are imposed.

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Gary A. Laakso, Southern Pacific Transportation Company, Southern Pacific Bldg., room 846, One Market Plaza, San Francisco, CA 94105.

Decided: October 2, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–24514 Filed 10–07–92; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Browning Ferris Industries, Inc., Lodging of Consent Decrees Pursuant to Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, and pursuant to section 122(d)(2)(B) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. 9622(d)(2)(B), notice is hereby given that on September 10, 1992, two proposed consent decrees in *United States* v. *Browning-Ferris Industries, Inc.*, Civil Action No. 92–CV–75460–DT, were lodged with the United States District Court for the Eastern District of Michigan, Southern Division. The United States filed this action under sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607.

The first consent decree provides that fourteen of the defendants will complete the cleanup remedy selected by the U.S. Environmental Protection Agency for the G&H Landfill Site in Macomb County, Michigan, pay $2.6 million of the past response costs incurred by the United States concerning the Site, and pay all future response costs, including oversight costs, incurred by the United States in connection with the Site. The second consent decree provides that the remaining two defendents, PPG Industries, Inc. and Reichhold Chemicals, Inc., will pay $2,464,760 of the past response costs incurred by the United States concerning the Site, plus interest.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decrees. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Browning-Ferris Industries, Inc., et al.*, D.J. Ref. No. 90–11–3–171B.

The proposed consent decrees may be examined at the office of the United States Attorney, Eastern District of Michigan 817 Federal Building, 231 West Lafayette, Detroit, Michigan 48226; at the Region V Office of U.S. Environmental Protection Agency, Records Center, Seventh Floor, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590; and at the Consent Decree Library, 601 Pennsylvania Avenue Building, NW., Washington, DC 20044 (202–347–2072). Copies of the proposed

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[1] Ordinarily a stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See *Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] See *Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987)

[3] The Commission will accept a late-filed trail use statement as long as it retains jurisdiction to do so.

consent decrees may be obtained in person or by mail from the Consent Decree Library, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $70.50 for the first decree, including its appendices, and in the amount of $3.75 for the second decree with PPG industries and Reichhold Chemicals (25 Cents per page for reproduction cost), payable to the Consent Decree Library.

Vicki A. O'Meara,

Acting Assistant Attorney General Environment and Natural Resources Division.

[FR Doc. 92-24468 Filed 10-7-92; 8:45 am]

BILLING CODE 4410-01-M

Estate of Forster; Lodging of Consent Decrees pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, As Amended

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on September 10, 1992, a proposed Consent Decree in *United States* v. *Estate of Forster*, Civil Action No. *88-CV-70613-DT*, was lodged with the United States District Court for the Eastern District of Michigan. The proposed Consent Decree concerns the hazardous waste site known as the G & H Landfill Site, located in Shelby Township, Macomb County, Michigan. The Consent Decree sets forth a settlement between the United States and the Estate of Leonard Forster, under which the Estate will impose deed restrictions on the Site prohibiting any use of the Site that would interfere with any response action at the Site, reimburse the United States for $201,136 of its unreimbursed past costs plus interest earned on this amount following its deposit into the Court's Registry, and grant access to the Site for the performance of response actions.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environmental and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Estate of Forster*, D.J. Ref. 90-11-3-171A.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Eastern District of Michigan, 817 Federal Building, 231 W. Lafayette, Detroit, Michigan 48226-2784; at the Region V Office of the Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604; and the Consent Decree Library, 601 Pennsylvania Avenue Building, NW., Washington, DC 20004 (202-347-2072). A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $3.75 (25 cents per page for reproduction costs) payable to the Consent Decree Library.

Vickie A. O'Meara,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 92-24467 Filed 10-7-92; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to Superfund (CERCLA) and RCRA

Notice is hereby given that on September 29, 1992, two proposed Consent Decrees in *United States* v. *Prentiss Creosote & Forest Products, Inc.*, No. H89-0130 CIV-W, were lodged with the United States District Court for the Southern District of Mississippi. These Consent Decrees concern the Prentiss Creosote Superfund Site in Jefferson Davis County, Mississippi. Pursuant to section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9607(a), as amended by the Superfund Amendments and Reauthorization Act of 1986, Public Law 99-499, and/or section 3008(a) and (h) of the Resource Conservation and Recovery Act, 42 U.S.C. 6928(a) and (h), the Complaint in this action seeks recovery of past response costs incurred by the United States at the Prentiss Creosote Site. The Site consists of a former wood treating facility. Under the first proposed Consent Decree, defendants Emmette Allen and Prentiss Creosote Materials, Inc. will pay $50,000. Under the second proposed Decree, defendant Sessions Polk will pay $3000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments concerning the proposed Consent Decrees. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States* v. *Prentiss Creosote & Forest Products, Inc.*, D.J. Ref. 90-7-1-461.

The proposed Consent Decrees may be examined at any of the following offices: (1) The Office of the United States Attorney for the Southern District of Mississippi, 245 East Capitol Street, room 324, Jackson, Mississippi; (2) the U.S. Environmental Protection Agency, Region 4, 345 Courtland Street, NE., Atlanta, Georgia; and (3) the Consent Decrees Library, 601 Pennsylvania Avenue Building, NW., Washington, DC 20004 (telephone (202) 347-2072). Copies of the proposed Decrees may be obtained by mail from the Consent Decree Library, 601 Pennsylvania Avenue, NW., P.O. Box 1097, Washington DC 20004. For a copy of the Consent Decrees please enclose a check for $7.75 ($.25 per page reproduction charge) payable to "Consent Decrees Library."

Vicki A. O'Meara,

Acting Assistant Attorney General, Environment & Natural Resources Division.

[FR Doc. 92-24376 Filed 10-7-92; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to Clean Air Act

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on September 28, 1992, 492-CV0066 a proposed Consent Decree in *United States* v. *Raymond Kampf and Buddy O. Wilson*, was lodged in the United States District Court for the Northern District of Ohio. The Complaint filed by the United States alleged violations of the Clean Air Act, the National Emissions Standards for Hazardous Air Pollutants (NESHAP) for Asbestos, 40 CFR part 61, subpart M. The Consent Decree requires the defendants to pay a total civil penalty of $2,500 in full settlement of the claims set forth in the Complaint filed by the United States. The Consent Decree further requires the Defendant to comply with the asbestos NESHAP and provide EPA with notice before removing any asbestos in the future.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments concerning the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States* v. *Raymond Kampf and Buddy O. Wilson*, D.J. Ref. No. 90-5-2-1-1692.

The proposed Consent Decree may be examined at any of the following offices: (1) The United States Attorney for the Northern District of Ohio, suite 500, 1404 East Ninth Street, Cleveland, Ohio

44114–1748 (contact Assistant United States Attorney Arthur Harris); (2) the U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590 (contact Assistant Regional Counsel Jeffrey Trevino); and (3) the Environmental Enforcement Section, Environment & Natural Resources Division, U.S. Department of Justice, room 1541, 10th & Pennsylvania Avenue, NW., Washington, DC. Copies of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section Document Center, Box 1097, 601 Pennsylvania Avenue, NW., Washington, DC 20004, telephone (202) 347–7829. For a copy of the Consent Decree please enclose a check in the amount of $3.00 (25 cents per page reproduction charge) payable to Consent Decree Library.

John C. Cruden,

Section Chief Environmental Enforcement Section, Environment & Natural Resources Division.

[FR Doc. 92–24378 Filed 10–7–92; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation and Liability Act, as amended (CERCLA), 42 U.S.C. 9622(i) and Departmental policy at 28 CFR 50.7, notice is hereby given that on *September 25,* 1992, a proposed consent decree in *United States* v.*Thatcher Company, (John Day Acid Spill),* Civil Action No. *92–1187JO,* was lodged with the United States District Court for the District of Oregon. The complaint alleges, *inter alia,* that owner/operator Thatcher Company, Inc. was liable under Section 107 of CERCLA, 42 U.S.C. 9607, for natural resource damages, including the reasonable costs of assessing such damages, incurred in connection with the release of hydrochloric acid, a hazardous substance, into the John Day River. Pursuant to the proposed consent decree: (1) The State of Oregon is entitled to $7,498 for reimbursement of response action costs arising out of the discharge of the hydrochloric acid; and (2) the United States, the State, and the Confederated Tribes of the Umatilla Indian Reservation will receive, as natural resources trustee, $275,000 from the defendant to be used for restoration or replacement of natural resources damaged by the discharge of the hydrochloric acid. The Department of Justice, for a period of thirty (30) days from the date of this publication, will receive comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resource Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v.*Thatcher Company,* Department of Justice reference number 90–11–3–678.

The proposed consent decree may be examined at the office of the United States Department of Interior, 500 NE. Multnomah Street, Portland, Oregon 97232, and at the Consent Decree Library, 601 Pennsylvania Avenue, NW., Washington, DC 20004, (202) 347–2072. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004. In requesting a copy, please enclose a check in the amount of $5.25 (25 cents per page reproduction costs) payable to "Consent Decree Library". When requesting a copy, please refer to *United States* v.*Thatcher Company,* Department of Justice number 90–11–3–678.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 92–24377 Filed 10–7–92; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

Cyclic Thermoplastic Research Venture; Notice Pursuant to the National Cooperative Research Act of 1984

Notice is hereby given that, on August 25, 1992, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), the Ford Motor Company filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the Cyclic Thermoplastic Research Venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the venture are Ford Motor Company, Dearborn, MI and General Electric Company, Fairfield, CT and its general area of planned activity is to develop new automotive applications and molding processes for General Electric developed cyclic thermoplastic composite materials. The program includes the fabrication of an automotive structural part under conditions which simulate volume production. The cost, performance and recyclability of the composite part will be evaluated for future applicability in automotive uses, the venture will work closely with governmental and other organizations and perform further acts allowed by the venture's objectives. Membership in the venture remains open, and the parties intend to file additional written notification disclosing all changes in membership to the venture.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 92–24462 Filed 10–7–92; 8:45 am]

BILLING CODE 4410–01–M

Michigan Materials and Processing Institute; Notice Pursuant to The National Cooperative Research Act of 1984

Notice is hereby given that, on August 26, 1992, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), the Michigan Materials and Processing Institute ("MMPI") filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing a change in its membership. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. The following company was recently accepted as an Associate Member in MMPI: Thermoplastic Pultrusions, Inc., Bartlesville, OK.

On August 7, 1990, MMPI filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on September 6, 1990, 55 FR 26710. The last notification was filed with the Department on February 19, 1992. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on April 2, 1992, 57 FR 11338.

Membership in this venture remains open, and MMPI intends to file additional written notification disclosing all changes in membership of this venture.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 92–24463 Filed 10–7–92; 8:45 am]

BILLING CODE 4410–01–M

Network Management Forum;—Notice Pursuant To The National Cooperative Research Act of 1984

Notice is hereby given that, on August 10, 1992, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), the Network Management Forum, formerly known as OSI/Network Management Forum, ("the Forum") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions to its membership. The additional notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the identities of the additional parties to the venture are as follows: Objective Systems Integrators, Folsom, CA, and Telecom Corporation of New Zealand, Wellington, NEW ZEALAND, are Associate Members; Central Computer Services, Hennopsmeer, SOUTH AFRICA, and US Army Belvoir RD&E Center, Fort Belvoir, VA, are Affiliate Members.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and the Forum intends to file additional written notifications disclosing all changes in membership.

On October 21, 1988, the Forum filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on December 8, 1988 (53 FR 49615).

The last notification was filed with the Department on April 27, 1992. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on June 4, 1992 (57 FR 23600).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 92-24466 Filed 10-7-92; 8:45 am]

BILLING CODE 4410-01-M

Petroleum Environmental Research Forum;

Notice Pursuant to the National Cooperative Research Act of 1984

Notice is hereby given that, on August 28, 1992, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301, *et seq.* ("the Act"), the Petroleum Environmental Research Forum ("PERF") filed written notifications simultaneously with the Attorney General and with the Federal Trade Commission disclosing a change in the membership of PERF. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, BHP Research Research, Melbourne Laboratories, Victoria, Australia has become a member of PERF.

No other changes have been made in either the membership or planned activities of PERF. Membership in PERF remains open, and PERF intends to file additional written notification disclosing all changes in membership.

On February 10, 1986, PERF filed its original notification pursuant to section 6(a) of the Act. The Department of Justice (the "Department") published a notice in the **Federal Register** pursuant to section 6(b) of the Act on March 14, 1986 (51 FR 8903).

The last notification of a change in membership was filed by PERF with the Department on July 17, 1992. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on August 11, 1992 (57 FR 35844-5).

Joseph H. Widmar,

Director of Operations Antitrust Division.

[FR Doc. 92-24464 Filed 10-7-92; 8:45 am]

BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research Act of 1984 Switched Multi-Megabit Data Service Interest Group

Notice is hereby given that, on July 30, 1992, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), the Switched Multi-Megabit Data Service Interest Group ("the Group") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes to its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the following are additional parties to the Group: DSC Communications of Plano, TX, and Telenex of Springfield, VA.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and the Group intends to file additional written notifications disclosing all changes in membership.

On April 19, 1991, the Group filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on May 23, 1991 (56 FR 23723). The last notification was filed with the Department on April 9, 1992. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on May 21, 1992 (57 FR 21672).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 92-24465 Filed 10-7-92; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-27,386]

Advanced Monobloc Corp., Cranbury, NJ; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on September 3, 1992, applicable to the workers at the subject firm. The certification notice will soon be published in the **Federal Register**.

New information from the company shows several worker separations after the termination date of February 28, 1992. Accordingly, the Department is changing the termination date from February 28, 1992 to October 5, 1992.

The intent of the Department's certification is to include all workers of Advanced Monobloc Corportion in Cranbury, New Jersey.

The amended notice applicable to TA-W-27,386 is hereby issued as follows:

All workers of Advanced Monobloc Corporation Cranbury, New Jersey who became totally or partially separated from employment on or after January 24, 1991 and before October 5, 1992 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed in Washington, DC, this 30th day of September 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 92-24492 Filed 10-7-92; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-26,503]

Bigard/Drillers, Inc. a/k/a Drillers Inc. Mt. Pleasant, MI; Amended Certification Regarding Eligibility to Apply for Workers Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on December 31, 1991, applicable to all workers of the subject firm. The notice was published in the **Federal Register** on January 9, 1992 (57 FR 932).

At the request of the State Agency and workers the Department reviewed the certification for workers of Bigard Drillers, Inc., in Mt. Pleasant, Michigan. New information received from the company shows that the parent company is Drillers, Inc., in Houston, Texas which purchased Bigard Drilling on November 13, 1990. The new name became Bigard/Drillers, Inc. The subject firm is also known as Drillers, Inc. Accordingly, the Department is amending the certification to show the correct workers group.

The amended notice applicable to TA-W-26, 503 is hereby issued as follows:

"All workers of Bigard Drilling and Bigard/Drillers Inc., a/k/a Drillers, Inc., Mt. Pleasant, Michigan who became totally or partially separated from employment on or after November 4, 1990 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974."

Signed at Wasington, DC, this 30th day of September 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 92-24494 Filed 10-7-92; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-27,614]

Brown Shoe Co., St. Louis, Mo; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on August 17, 1992 in response to a worker petition which was filed on August 17, 1992 on behalf of workers at Brown Shoe Company, St. Louis, Missouri.

The investigation revealed that the petitioning group of workers at Brown Shoe Company, 8300 Maryland Avenue, St. Louis, Missouri (TA-W-27,614) is the same group of workers which petitioned under Brown Shoe Company, 8300 Maryland Avenue, Clayton, Missouri (TA-W-27,570).

A previous investigation of Brown Shoe Company, Clayton, Missouri (TA-W-27,570) resulted in a active certification (Brown Shoe Company, Clayton, Missouri, TA-W-27,570, certification issued on September 23, 1992, impact date of July 17, 1991 and an expiration date of September 23, 1994); consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 24th day of September, 1992

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 92-24495 Filed 10-7-92; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-27,618]

Compaq Computer Corp. Houston, TX.; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on August 17, 1992 in response to a worker petition which was filed on August 17, 1992 on behalf of workers at Compaq Computer Corporation, Houston, Texas.

An active certification covering the petitioning group of workers remains in effect (TA-W-26,663). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, D.C. this 30th day of September, 1992

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 92-24493 Filed 10-7-92; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-27,726]

Fruehauf Trailer Operations, Uniontown, PA; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on August 31, 1992 in response to a worker petition which was filed on behalf of workers at Fruehauf Trailer Operations, Uniontown, Pennsylvania.

A negative determination applicable to the petitioning group of workers was issued on January 16, 1992 (TA-W-26,381). No new information is evident which would result in a reversal of the Department's previous determination. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 30th day of September 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 92-24491 Filed 10-7-92; 8:45 am]

BILLING CODE 4510-30-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-261]

Carolina Power & Light Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of appendix R to 10 CFR part 50 to Carolina Power & Light Company (the licensee) for the H.B. Robinson Steam Electric Plant, Unit No. 2, located in Darlington County, South Carolina.

Environmental Assessment

Identification of Proposed Action

The exemption would grant relief in 10 areas where fire protection features are not in conformance with the technical requirements of section III.J of appendix R to 10 CFR part 50, which requires eight-hour battery powered emergency lighting units in certain areas. The exemption is in response to the licensee's request dated January 22, 1992.

The Need for the Proposed Action

The proposed exemption is needed because the portable lighting units described in the licensee's request regarding the emergency light are more practical for meeting appendix R. Literal compliance with appendix R would not significantly enhance safety and is not necessary to meet the intent of appendix R.

Environmental Impacts of the Proposed Action

The proposed exemption will not adversely affect the licensee's ability to achieve and maintain safe shutdown conditions following a postulated fire. The probability of a fire will not be increased, and the post-fire radiological releases will be no greater than previously determined; furthermore, the proposed exemption will not otherwise affect radiological plant effluents. The Commission concludes, therefore, that there are no significant radiological environmental impacts associated with this proposed exemption.

With regard to potential non-radiological impacts, the proposed exemptions involve features located entirely within the restricted areas as defined in 10 CFR part 20. They do not affect non-radiological plant effluents and have no other environmental impact; therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed exemption.

Alternative Use of Resources

This action does not involve use of resources not previously considered in the Final Environmental Statement for the H.B. Robinson Steam Electric Plant, Unit No. 2, dated April 1975.

Agencies and Persons Consulted

The staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption. Based upon the foregoing environmental assessment, the staff concludes 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 request for exemption dated January 22, 1992, 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 Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29535.

Dated at Rockville, Maryland this 2nd day of October 1992.

Elinor G. Adensam,

Director, Project Directorate II-1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 92-24504 Filed 10-7-92; 8:45 am]

BILLING CODE 7590-01-M

ACNW Working Group on Potential for Presence of Natural Resources at a High-Level Waste Repository Site; Meeting

The ACNW Working Group on Potential for Presence of Natural Resources at a High-Level Waste Repository Site will hold a meeting on October 20, 1992, at the St. Tropez Hotel, 455 East Harmon Avenue, Las Vegas, NV. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, October 20, 1992—8:30 a.m. Until the Conclusion of Business

The Working Group will discuss the potential for the presence of significant resources at the proposed Yucca Mountain high-level waste repository.

Applicable NRC and DOE regulations contain statements regarding the need to avoid sites with significant natural resources. The presence of significant natural resources, including groundwater, at or near the site of a proposed high-level waste repository is an adverse situation, that could potentially lead to a disqualifying condition. It is perceived that the presence of such resources in the vicinity of the site could give rise to activities that would eventually lead to inadvertent human intrusion into the repository.

Oral statements may be presented by members of the public with the concurrence of the ACNW Working Group Chairman; written statements will be accepted and made available to the Working Group. 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 ACNW Working Group, its consultants, and staff. Persons desiring to make oral statements should notify the ACNW staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the ACNW Working Group, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

Further information regarding the agenda for this meeting, 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 therefor can be obtained by a prepaid telephone call to the cognizant ACNW staff engineer, Mr. Howard J. Larson, ACNW (telephone 301/492-7707) between 7:30 a.m. and 5:00 p.m. (EST). 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: October 1, 1992.

R.K. Major,

Chief, Nuclear Waste Branch.

[FR Doc. 92-24499 Filed 10-7-92; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Revised Meeting Agenda

In accordance with the purposes of Sections 29 and 182 b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on October 8-10, 1992, in room P-110, 7920 Norfolk Avenue, Bethesda, Maryland. Notice of this meeting was published in the **Federal Register** on September 23, 1992. Portions of this meeting on Friday and Saturday, October 9 and 10, 1992, have been revised to accommodate additional sessions.

Friday, October 9, 1992

8:30 a.m.-10 a.m.: Maintenance of Nuclear Power Plants (Open)—The Committee will review and comment on a proposed Regulatory Analysis and a draft Regulatory Guide, "Monitoring the Effectiveness of Maintenance at Nuclear Power Plants," and an associated NUMARC document 93-01, Revision 2A, "Industry Guideline for Monitoring the Effectiveness of Maintenance at Nuclear Power Plants."

Representatives of the NRC staff and the nuclear industry will participate, as appropriate.

10:15 a.m.-10:45 a.m.: Preparation of ACRS Reports (Open)—The Committee will discuss the scope and content of reports to be considered during this meeting.

10:45 a.m.-11:15 a.m.: Training and Requalification of Nuclear Power Plant Operators (Open)—The Committee will hear a briefing, discuss, and report as appropriate on results of the NRC pilot simulator examination program and proposed changes to NRC rule (10 CFR part 55) regarding recertification of nuclear power plant operators.

Representatives of the NRC staff and the nuclear industry will participate, as appropriate.

11:15 a.m.-12:15 p.m.: Use of PRA in the Regulatory Process (Open)—The Committee will hear a briefing by representatives of the NRC Working Group on the status of tasks related to use of PRA in the NRC regulatory process.

1:15 a.m.-3:15 p.m.: Design Acceptance Criteria (Open)—The Committee will review and comment on proposed Design Acceptance Criteria (DAC) in the areas of man/machine

interface and control and protection systems.

Representatives of the NRC staff and the nuclear industry will participate, as appropriate.

3:15 p.m.–4:15 p.m.: Yankee Rowe Nuclear Power Plant (Open)—The Committee will hear a briefing by representatives of the NRC staff regarding lessons learned from the review and evaluation of the Yankee Rowe nuclear plant reactor pressure vessel integrity.

Representatives of the NRC staff and the nuclear industry will participate, as appropriate.

4:15 p.m.–5:15 p.m.: Subcommittee and Members Activities (Open/Closed)—The Committee will discuss the report and recommendations of the ACRS Planning and procedures Subcommittee regarding conduct of Committee business, the international meeting on computers on September 22, 1992, and the visit to Eastern European nuclear power plants by the ACRS Chairman and information provided to him by representatives of the organizations responsible for the operation of these facilities.

Portions of this session will be closed as necessary to discuss information provided in confidence by a foreign source.

5:15 p.m.–5:30 p.m.: Election of ACRS Officer (Closed)—The Committee will discuss qualifications of candidates nominated for Member-at-Large of the Planning and Procedures Subcommittee.

This session will be closed to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy.

5:30 p.m.–6:30 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports regarding matters considered during this meeting.

Saturday, October 10, 1992

8:30 a.m.–11:15 a.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports regarding matters considered during this meeting.

11:15 a.m.–12 Noon: Appointment of ACRS Members (Closed)—The Committee will discuss qualifications of candidates proposed for appointment as members of the Committee.

This session will be closed to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy.

1 p.m.–2:30 p.m.: Miscellaneous (Open/Closed)—The Committee will complete discussions of items considered during this meeting, including recommendations regarding candidates for the NRC "Thermal-Hydraulic" review group, and matters which were not completed at previous meetings as time and availability of information permit.

Portions of this session will be closed as necessary to discuss information regarding the qualifications of candidates proposed for appointment to this review group, the release of which would represent a clearly unwarranted invasion of personal privacy.

Procedures for the conduct of and participation in ACRS meetings were published in the Federal Register on October 1, 1991 (56 FR 49800). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those open portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS Executive Director, Mr. Raymond F. Fraley, as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the ACRS Executive Director prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with Subsection 10(d) Public Law 92–463 that it is necessary to close portions of this meeting noted above to discuss Information provided in confidence by a foreign source in accordance with 5 U.S.C. 552(c)(4) and information the release of which would represent a clearly unwarranted invasion of personal privacy per 5 U.S.C. 552(c)(6).

Further information regarding topics to be discussed, 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 can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley (telephone 301–492–8049), between 8 a.m. and 4:30 p.m. EST.

Dated: October 2, 1992.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 92–24498 Filed 10–7–92; 8:45 am]

BILLING CODE 7590–01–M

Fifth Meeting of the SCDAP/RELAP5 Peer Review Committee

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The SCDAP/RELAP5 Peer Review Committee will hold its fifth meeting to review the technical adequacy of the SCDAP/RELAP5 code.

DATES: November 3–4, 1992.

TIME: 8:30 am each day.

ADDRESSES: One White Flint North, Rockville.

FOR FURTHER INFORMATION CONTACT: Dr. Y.S. Chen, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, (301) 492–3566.

SUPPLEMENTARY INFORMATION: The SCDAP/RELAP5 Peer Review Committee will hold its fifth meeting to review the technical adequacy of the SCDAP/RELAP5 code on November 3–4, 1992, in Rockville, Maryland. The SCDAP/RELAP5 code has been developed for best-estimate transient simulation of light water reactor coolant systems during severe accidents as well as large and small break loss-of-coolant accident, and operational transients such as anticipated transient without SCRAM, loss of offsite power, loss of feedwater, and loss of flow. The code is based on three separate codes: RELAP5, SCDAP, and TRAP–MELT, which are combined to model the coupled interactions that occur between the Reactor Coolant System (RCS), the core, and the fission products during a severe accident. The newest version of the code is SCDAP/RELAP5/MOD3. A number of organizations inside and outside the NRC are using or planning to use the current version. Although the quality control and validation efforts are seen to be proceeding, there is a need to have a broad technical review by recognized experts to determine the technical adequacy of the SCDAP and TRAP–MELT portions of SCDAP/RELAP5 for the serious and complex analyses it is expected to perform.

This meeting will focus on completing the review, finalizing the summary report and receiving comments from the NRC.

Dated at Rockville, Maryland, this 1st day of October, 1992.

For the U.S. Nuclear Regulatory Commission.

Farouk Eltawila,

Chief, Accident Evaluation Branch, Division of Systems Research, Office of Nuclear Regulatory Research.

[FR Doc. 92-24501 Filed 10-7-92; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-321 and 50-366]

Georgia Power Co.; Partial Denial of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has denied a request by Georgia Power Company, (the Licensee) for amendments to Facility Operating License Nos. DPR-57 and NPF-5, issued to the licensee for operation of the Edwin I. Hatch Nuclear Plant, Unit Nos. 1 and 2, located in Appling County, Georgia. Notice of Consideration of Issuance of the amendments was published in the **Federal Register** on August 5, 1992 (57 FR 34584).

The licensee's application of July 17, 1992, proposed several changes to the Technical Specifications relating to shutdown and refueling operations. The amendments authorize these changes except for one to change Hatch Unit 2 Action statement regarding shutdown cooling operation of the residual heat removal (RHR) service water system. This specific change, as proposed, was found to be nonconservative in that it will reduce the redundancy required for the operability of the RHR service water system which presently exists in the limiting condition of operation for Technical Specification 3.7.1.1.

The NRC staff has concluded that the licensee's proposed change is unacceptable and is denied. The licensee was notified of the Commission's denial by letter dated October 1, 1992.

By November 9, 1992, the licensee may demand a hearing with respect to the denial described above. Any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for hearing or 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, by the above date.

A copy of any petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, D.C., 20555, and to Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N. Street, NW., Washington, DC 20037, attorney for the licensee.

For further details with respect to this action, see (1) the application for amendment dated July 17, 1992, and (2) the Commission's letter to the Licensee dated October 1, 1992.

These documents are 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 Appling County Public Library, 301 City Hall Drive, Baxley, George 31513. A copy of item (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Document Control Desk.

Dated at Rockville, Maryland, this 1st day of October, 1992.

For the Nuclear Regulatory Commission.

David B. Matthews,

Project Directorate II-3, Division of Reactor Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 92-24503 Filed 10-7-92; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-336-OLA, FOL No. DPR-65 (ASLBP No. 92-665-02-OLA) (Spent Fuel Pool Design)]

Northeast Nuclear Energy Co. (Millstone Nuclear Power Station, Unit No. 2); Hearing and Prehearing Conference

October 1, 1992.

On April 28, 1992, the Nuclear Regulatory Commission published in the **Federal Register** a notice that the Commission was considering issuance of an amendment to the operating license issued to Northeast Nuclear Energy Company for the operation of Millstone Nuclear Power Station, Unit No. 2, located in New London County, Connecticut. 57 FR 17934.

The amendment would modify the spent fuel pool design of Millstone Unit 2 by changing the design from a two-region to a three-region configuration. The notice stated that the Commission Staff proposed to make a determination that the amendment request involves a "no significant hazards consideration" consistent with the provisions of 10 CFR 50.91. The public was invited to comment on the proposed determination. Further, the notice provided that any person whose interest may be affected by the amendment proceeding and who wishes to become a party to the proceeding may file a request for a hearing and petition for leave to intervene by May 28, 1992.

An Atomic Safety and Licensing Board (Licensing Board) was established to rule on requests for hearing and petitions for leave to intervene and to preside over any resulting hearing. Seven persons or organizations located in the vicinity of Millstone Nuclear Power Station submitted requests for hearing and petitions for leave to intervene. By Order of September 30, 1992, the Licensing Board found that one petitioner, Co-Operative Citizen's Monitoring Network (CCMN), had standing to intervene in the proceeding and the CCMN has submitted a contention appropriate for hearing. The Order admitted CCMN as a party to the proceeding and accepted the contention for hearing. The contention pertains to whether the criticality analysis for the redesign of the spent fuel pool was completed and accurate. Other parties to the proceeding are the Staff of the Nuclear Regulatory Commission and Northeast Nuclear Energy Company, the Licensee herein.

The public shall please take notice that a public hearing shall take place among the named parties on CCMN's contention at a time and place to be later announced.

To prepare for the hearing, the Licensing Board directs the parties or their representatives to appear at a prehearing conference in accordance with the provisions of 10 CFR 2.751a and 2.752. The conference shall be held on November 5, 1992 in New Haven, Connecticut at a time and place to be announced. The prehearing conference is open to the public, but only the parties and their representatives may participate.

Matters to be discussed at the prehearing conference shall include:

1. Further identification, simplification and clarification of the issues in the proceeding.

2. The possibility of settlement, stipulations of fact and admissions of fact.

3. Determine the need for any discovery under the NRC discovery rules, 10 CFR 2.740-2.744.

4. Establish a schedule for motions for summary disposition, exchange of evidence, and any evidentiary hearing.

5. Questions by the Board to the parties concerning technical matters relevant to the contention, and;

6. Any other matter properly before the Licensing Board.

The parties are requested to have their technical advisors present to aid the Licensing Board and the parties in the discussion of issues. The Licensing Board shall serve its questions upon the parties in advance of the prehearing conference.

Dated: October 1, 1992.

For the Atomic Safety and Licensing Board.

Ivan W. Smith,

Chairman, Administrative Judge.

[FR Doc. 92-24500 Filed 10-7-92; 8:45 am]

BILLING CODE 7590-01-M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Railroad Retirement Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Railroad Separation Allowance or Severance Pay Report.

(2) *Form(s) Submitted:* BA-9.

(3) *OMB Number:* 3220-0173.

(4) *Expiration date of current OMB clearance:* Three years from date of OMB approval.

(5) *Type of request:* Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

(6) *Frequency of response:* Quarterly.

(7) *Respondents:* Businesses or other for profit.

(8) *Estimated annual number of respondents:* 300.

(9) *Total annual responses:* 5,000.

(10) *Average time per response:* 1.25.

(11) *Total annual reporting hours:* 6,250.

(12) *Collection description:* Section 7301 of the Railroad Unemployment & Retirement Improvement Act of 1988 (Public Law 100-647) provides for a lump-sum payment to an employee or the employee's survivor equal to the Tier 2 taxes paid by the employee on a separation allowance or severance payment for which the employee did not receive credits towards retirement. The collection obtains the information needed from railroad employers concerning the separate allowances and severance payments paid after December 31, 1988.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the form and supporting documents can be obtained from Dennis Eagan, the agency clearance officer (312-751-4693). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611-2092 and the OMB reviewer, Laura Olvien (202-395-7316), Office of Management and Budget, room 3002, New Executive Office Building, Washington, DC 20503.

Dennis Eagan,

Clearance Officer.

[FR Doc. 92-24459 Filed 10-7-92; 8:45 am]

BILLING CODE 7905-01-M

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Railroad Retirement Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* RUIA Claims Notification and Verification Systems.

(2) *Form(s) submitted:* ID-4k.

(3) *OMB Number:* 3220-0171.

(4) *Expiration date of current OMB clearance:* Three years from date of OMB approval.

(5) *Type of request:* Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

(6) *Frequency of response:* On Occasion.

(7) *Respondents:* Businesses or other for profit.

(8) *Estimated annual number of respondents:* 500.

(9) *Total annual responses:* 590,000.

(10) *Average time per response:* .0105677

(11) *Total annual reporting hours:* 6,235

(12) *Collection description:* Section 5b of the RUI Act requires that effective January 1, 1990, when a claim for benefits is filed with the Railroad Retirement Board (RRB), the RRB shall provide notice of such claim to the claimant's base year employer(s) and afford such employer(s) an opportunity to submit information relevant to the claims.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the form and supporting documents can be obtained from Dennis Eagan, the agency clearance officer (312-751-4693). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611-2092 and the OMB reviewer, Laura Oliven (202-395-7316), Office of Management and Budget, room 3002, New Executive Office Building, Washington, DC 20503.

Dennis Eagan,

Clearance Officer.

[FR Doc. 92-24474 Filed 10-07-92; 8:45 am]

BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-31281; File No. SR-MSRB-92-7]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Delivery of Official Statements to the Board

October 1, 1992.

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 September 3, 1992, the Municipal Securities Rulemaking Board ("Board" or "MSRB") 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 self-regulatory organization. The purpose of the proposed rule change is to require underwriters of primary offerings to send copies of official statements to the Board if such documents are prepared by or on behalf of the issuer. 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 Board is filing an amendment to rule G-36, on delivery of official statements to the Board (hereafter referred to as "the proposed rule change"). The proposed rule change would expand the scope of rule G-36 by requiring that underwriters of primary offerings must send copies of official statements to the Board if such documents are prepared by or on behalf of the issuer. However, the amendment would retain the exemption for "limited placements," as that term is used in Securities Exchange Act Rule 15c2-12 ("SEC Rule 15c2-12").

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 Board 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 texts of these statements may be examined at the places specified in Item IV below. The Board has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Rule G–36 currently requires that brokers, dealers, and municipal securities dealers deliver to the Board, among other things, copies of final official statements for most primary offerings, if such documents are prepared by or on behalf of the issuer.[1] These official statements then are made available to interested parties through the Board's Municipal Securities Information Library ("MSIL") system.

An underwriter's specific obligations under rule G–36 are governed, in part, by whether the offering is subject to SEC Rule 15c2–12, relating to preparation of official statements. In general, SEC Rule 15c2–12 requires underwriters participating in primary offerings of municipal securities of $1 million or more to obtain, review, and distribute to investors copies of final official statements. The rule also requires underwriters to, among other things, contract with the issuer to receive a sufficient number of copies of the final official statement to comply with Board rules.

Certain primary offerings of municipal securities are not subject to the requirements of SEC Rule 15c2–12. The rule does not apply to (i) offerings under $1 million in par value; and (ii) offerings that are specifically exempted under section (c) of that rule. The three categories of offerings that fall under this exemption are those primary offerings with authorized denominations of $100,000 or more and which:

(1) Are sold to no more than thirty-five persons, each of whom the underwriter reasonably believes (i) has such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risks of the prospective investment and (ii) is not purchasing for more than one account or with a view to distributing the securities (referred to herein as "limited placements"); or

(2) Have maturities of nine months or less; or

(3) At the option of the holder thereof may be tendered to an issuer of such securities or its designated agent for redemption or repurchase at par value or more at least as frequently as every nine months until maturity, earlier redemption, or purchase by an issuer or its designated agent.

While SEC Rule 15c2–12 applies to primary offerings with aggregate principal amounts of $1 million or more (unless specifically exempted from that rule), rule G–36 applies to primary offerings of $1 million or more, as well as offerings under $1 million. For offerings of $1 million or more, rule G–36 requires that the underwriter send to the Board two copies of the official statement along with two completed Forms G–36(OS) [2] within one business day of receiving the official statement from the issuer, but in no event later than 10 business days after the date of the final agreement to purchase, offer or sell the securities. For issues under $1 million, rule G–36 requires that, if the issuer has voluntarily prepared an official statement, then the underwriter must send the documents to the Board within one business day of settlement or closing of the issue. However, the requirements of rule G–36 currently do not apply to offerings that qualify for an exemption under SEC Rule 15c2–12(c), regardless of the amount of the offering. While there is no mandatory delivery requirement for such exempt offerings, copies of official statements for such offerings are included in the MSIL system if an issuer voluntarily prepares an official statement and the underwriter voluntarily provides copies of that document (along with completed Forms G–36(OS)) to the Board. The Board specifically exempted these offerings from the scope of rule G–36 when it adopted the rule in 1989. At that time, the Board noted that SEC Rule 15c2–12 did not require that official statements be prepared for such offerings, and the Board believed that official statements voluntarily prepared for such offerings probably would be of little interest to the market.

At a meeting of the Board's MSIL Advisory Committee,[3] several committee members stated that the Board should ensure that its collection of official statements in the MSIL system is as complete as possible. Several committee members noted that disclosure documents for short-term securities, such as those nine months or under in maturity, were an important source of information about municipal issuers. Based on these comments, as well as the experience gained by the Board over the last several years in collecting and disseminating official statements, the Board believes that there is interest among market participants for official statements relating to two categories of offerings that are currently exempt from Board rule G–36, *i.e.*, offerings with maturities of nine months or less (which includes short-term notes), and offerings with put periods of nine months or less (which includes variable rate demand obligations).

In creating the MSIL system, the Board repeatedly has expressed its concern that the general lack of access to information about municipal securities and their issuers is detrimental to the overall integrity and efficiency of the municipal securities market. The Board's efforts in this area have been aimed at enhancing the availability of, and accessibility to, existing disclosure documents. The Board determined to adopt the proposed rule change because it believes that expanding the scope of rule G–36 to include offerings with maturities of nine months or less and offerings with put periods of nine months or less will result in a more complete collection of disclosure documents, thereby increasing the overall integrity, efficiency and liquidity of the municipal securities market.

(b) The Board has adopted this amendment to rule G–36 pursuant to Section 15B(b)(2)(C) of the Act which requires, in pertinent part, that the Board's rules be designed:

to prevent fraudulent and manipulative acts and practices, to promote just and

[1] For purposes of rule G–36, the following terms have the following meanings:

(i) A "final official statement" is defined as a document or set of documents prepared by an issuer of municipal securities or its representative, setting forth, among other things, information concerning the issuer(s) of such securities and the proposed issue that is complete as of the date of delivery of the document or set of documents to the underwriter.

(ii) A "primary offering" is an offering of municipal securities directly or indirectly by or on behalf of an issuer of such securities, including certain remarketings.

[2] Form G–36(OS) requires the party sending the official statement to provide certain information which is necessary for the Board to process such documents for inclusion in the MSIL system.

[3] The MSIL Advisory Committee advises the Board on MSIL system operations. It is composed of 26 individuals, representing a cross-section of municipal securities market participants. The Committee met on January 15, 1992, in New York City, at which time the scope of rule G–36 was discussed.

equitable principles of trade * * * to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest * * *.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act since it will apply equally to all brokers, dealers, and municipal securities dealers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

At its February 1992 meeting, the Board determined to publish for comment draft amendments to rule G–36, on delivery of official statements to the Board. The draft amendments and Request for Comments were subsequently published in the April 1992 issue of *MSRB Reports*, and the Board received four comment letters in response thereto. One commentator provided information on limited placements; one commentator opposed the inclusion of short-term and limited placement offerings; one commentator supported the amendments in their entirety; and one commentator opposed any expansion of rule G–36. The following specific comments were provided to the Board:

Limited Placements

None of the commentators suggested that limited placements by included within the scope of rule G–36. Two commentators believe that private placement memoranda differ from official statements, and that such documents are not intended for public distribution. One of these commentators believes that this mode of marketing sometimes is chosen to ensure the confidentiality of financial information, and that a mandatory delivery requirement would have a chilling effect on private placements. Nevertheless, this commentator believes that voluntary filings would provide useful information to the market without misleading the public because underwriters can refrain from filing in instances in which the disclosure would be misleading. One commentator believes that although some of these securities enter the public market, making the memoranda publicly available could lead to misuse of the information. The Board concurs with the commentators.

Variable Rate Demand Obligations ("VRDOs") and Short-Term Offerings

Two commentators believe that there is limited secondary market activity in VRDOs and short-term securities, and consequently, that there would be little, if any, benefit to including disclosure documents for such securities in the MSIL system. In contrast, members of the MSIL Advisory Committee have commented that such issues sometimes appear in the secondary market, and that it would be desirable for the Board to collect and make available these documents. The Board notes that primary offerings of short-term notes and VRDOs often are fairly large in par value and, in some cases, are actively traded in the market. Thus, the Board believes that, on balance, including such documents in the MSIL system would benefit the market by increasing public access to these disclosure documents.[4]

Some of the commentators believe that information disseminated from the MSIL System may be misleading to investors if, for example, circumstances have changed and the documents are no longer current or reliable, or if the investor attempts to apply information in the document to other securities to which the document does not relate, and for which purpose the document was not intended. The Board notes that such an argument can be applied to any of the official statements currently provided to the Board under rule G–36. The Board believes that these documents clearly describe the issues to which they relate and their dates of preparation. One commentator suggests that the Board place a legend on any materials disseminated from the MSIL system indicating that such materials are dated and may no longer be reliable. The Board has done so.

One of the commentators believes that including VRDOs and short-term offerings within the scope of rule G–36 would increase costs for issuers. This commentator states that the VRDO market is specialized and that if issuers believe that their documents may be accessed through the MSIL system and relied upon by unsophisticated investors, then they may be forced to make more comprehensive disclosure to avoid liability. Similarly, the commentator argues that disclosure that may be adequate for short-term securities may be misleading when applied to that issuer's long-term obligations, and that in order to avoid liability, such issuers may be forced to produce more comprehensive (and expensive) disclosure documents in connection with short-term securities.

The Board is prohibited from regulating the form and content of issuers' disclosure documents, and from requiring issuers to prepare official statements. Thus, the Board cannot require issuers to produce (or deliver) more comprehensive disclosure documents. As stated above, the Board's efforts in this area have been aimed solely at enhancing the availability of, and accessibility to, existing disclosure documents. The Board believes that expanding the scope of rule G–36 will enhance public access to these important disclosure documents, in furtherance of the Board's statutory purposes.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, 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 Board's principal offices. All submissions should refer to File No. SR–MSRB–92–7 and should be submitted by October 29, 1992.

[4] As noted above, some underwriters now send official statements for these offerings to the Bureau on voluntary basis. The Board currently enters these documents into the MSIL system and makes them available to the public for inspection and copying.

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. 92-24400 Filed 10-7-92; 8:45 am]

BILLING CODE 8010-01-M

Release No. 34-31280; File No. SR-NASD-92-31

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to the Designation of Public Arbitrators Under the NASD Code of Arbitration Procedure

October 1, 1992.

On July 2, 1992, the National Association of Securities Dealers, Inc. ("NASD" or "Association") submitted a proposed rule change to the Securities and Exchange Commission ("SEC" or "Commission") pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder.[2] The proposal amends part III, section 19(c) of the NASD's Code of Arbitration Procedure ("Code") [3] in order to designate individuals who are associated with the futures industry as being from the securities industry for the purpose of serving on an arbitration panel. Such individuals would, therefore, be excluded from the definition of "public arbitrator" contained in Section 19(d) of the Code.[4]

Notice of the proposed rule change, as amended, together with its terms of substance was provided by the issuance of a Commission release (Securities Exchange Act Release No. 31056, August 19, 1992) and by publication in the **Federal Register** (57 FR 38902, August 27, 1992). No comments were received on the proposal. This order approves the proposed rule change.

The instant proposed rule change developed, in part, from a report by the Commodity Futures Trading Commission ("CFTC") which was reviewed by SICA. The report was the result of a study of arbitration facilities that had been used to resolve disputes involving commodities and futures products. Arbitration awards rendered under the rules of the National Futures Association ("NFA") and the various self-regulatory organizations ("SROs") were reviewed in connection with the study. The report concluded that while the number of futures-related arbitration cases handled outside the NFA was very low, the other forums' arbitration rules were adequate to qualify them as alternative forums under CFTC Regulation 180.3. Since some futures-related disputes are handled under the Code, SICA determined that the Code should be amended to exclude as public arbitrators any individuals who have close ties with the futures industry. The amendment would parallel other exclusions from the definition of public arbitrator for individuals who have close ties with the securities industry. SICA recommended that all SROs adopt this provision. In order to improve its arbitrator classification rules and to provide for more uniform arbitration standards throughout the securities industry, the NASD proposed the instant rule change.

In general, subparagraph (6) to section 19(c) designates individuals who are associated with the futures industry as being from the securities industry for the purpose of serving on an arbitration panel. This includes individuals who are registered under the Commodity Exchange Act,[5] who are members of a registered futures association or any commodities exchange, or who are associated with any such persons. Such individuals would, therefore, be excluded from the definition of "public arbitrator" contained in section 19(d) of the Code. The NASD's arbitrator classification rules for cases involving public investors have been designed to assure two distinct pools of arbitrators. One pool, from which a minority of an arbitration panel is selected, consists of securities arbitrators, persons who have a strong knowledge of securities industry practices based upon their own meaningful securities industry affiliations. The second pool, from which the majority of a panel is selected, consists of public arbitrators, persons who either do not have any industry affiliation, or who do not have current or significant industry affiliations. All arbitrators, public and industry, are required to be impartial with respect to each individual dispute before them. Given the close similarities and ties between the securities and commodities industries, the proposed rule change appropriately classifies persons with commodities industry affiliations as securities arbitrators.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD, including the requirements of section 15A(b)(6) of the Act.[6] Section 15A(b)(6) requires, in part, that the rules of the NASD be designed "to prevent fraudulent and manipulative acts and practices * * * to foster cooperation and coordination with persons engaged in regulating, clearing, settling, [and] processing information * * * [and] to protect investors and the public interest * * *." The proposed rule change will help ensure the integrity of the arbitration process, thus furthering the prevention of fraudulent and manipulative practices and protecting investors and the public interest. Further, the instant rule proposal helps foster cooperation and coordination between the various entities that assist in regulating the securities industry.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.[7]

Margaret H. McFarland

Deputy Secretary.

[FR Doc. 92-24431 Filed 10-7-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-31279; File No. SR-NASD-92-22]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to an Exemption From Free-Riding and Withholding Interpretation for Securities of Issuers That Wholly Own a Member Firm

October 1, 1992.

On June 2, 1992, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder.[2] The proposal amends

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1992).

[3] *NASD Securities Dealers Manual*, Code of Arbitration Procedure, part III, Uniform Code of Arbitration, section 19, Designation of Number of Arbitrators, CCH, ¶3719.

[4] On July 31, 1992, the NASD filed Amendment No. 1 to the proposed rule change. Amendment No. 1 replaced the phrase "designated contract market", as originally proposed in section 19(c)(6) of the Code with the phrase "commodities exchange". The amendment conforms the language proposed by the NASD with language previously adopted by the Securities Industry Conference on Arbitration ("SICA").

[5] 7 U.S.C. 1 *et seq.* (1988).

[6] 15 U.S.C. 78o-3(b)(6) (1988).

[7] 17 CFR 200.30-3(a)(12) (1992).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1992).

Section 13 of Schedule E to the NASD By-Laws ("Section 13") [3] to provide an exemption from the NASD's Free-Riding and Withholding Interpretation ("Free-Riding Interpretation") [4] for securities of issuers that wholly own a member firm.

Notice of the proposed rule change, together with its terms of substance, was provided by the issuance of a Commission release (Securities Exchange Act Release No. 31019, August 11, 1992) and by publication in the **Federal Register** (57 FR 37178, August 18, 1992). No comments were received on the proposal. This order approves the proposed rule change.

The rule change approved herein amends Schedule E to the NASD's By-Laws to provide that a member may sell securities to its employees and other associated persons when the securities are issued by an entity that wholly owns the member. Currently, the NASD's Free-Riding Interpretation prohibits employees and other associated persons of NASD member firms owned by large holding companies from purchasing shares of their respective holding company in a public offering. The NASD believes that it is appropriate and within the original intent of Section 13 to permit such persons to purchase the securities offered by their respective holding companies.

The NASD's Free-Riding Interpretation requires NASD members to make a *bona fide* public distribution, at the public offering price, of securities in a public offering that trade at a premium in the secondary market, whenever such secondary market begins. The Free-Riding Interpretation is based on the NASD's belief that the failure to make a *bona fide* public distribution when there is demand for an issue can be a factor in artificially raising the price at which the security trades in the secondary market. In particular, failure to make a *bona fide* distribution when the member may have information relating to demand for the securities or other factors not generally known to the public would be inconsistent with high standards of commercial honor and just and equitable principles of trade, and would lead to an impairment of public confidence in the fairness of the investment banking and securities business.

Section 13 provides an exemption from the Free-Riding Interpretation to permit an NASD member to sell certain securities in a public offering that trade at a premium in the secondary market, to the member's employees; to potential employees of the member resulting from a merger, acquisition, or other business combination of members that results in one public successor corporation; to persons associated with the member; and to the immediate family of such employees or associated persons. This exemption is applicable only to securities that are offered in a public offering by (i) the member, (ii) a parent of a member, or (iii) an issuer treated as a member or parent of a member pursuant to Section 9 of Schedule E to the NASD By-Laws.[5] Section 13 is based on the NASD's belief that employees of a member may naturally wish to have an ownership interest in their member-employer or its parent that is a public company, and that investment by employees in their employers is beneficial to the employee-employer relationship.

Section 2(h) of Schedule E defines the term "parent" for purposes of Section 13 as any entity affiliated with a member from which member the entity derives 50% or more of its gross revenues or in which it employs 50% or more of its assets. Large, diversified holding companies cannot meet this definition of a parent of a member because the activities of the broker-dealer are only a small part of their business. Employees and other associated person of NASD member firms owned by such large holding companies, therefore, cannot rely on the section 13 exemption to the Free-Riding Interpretation to purchase shares of their respective holding company in a public offering.

The NASD believes that it is appropriate and within the intent of section 13 and the Free-Riding Interpretation to allow employees and other section 13 associated persons of NASD members wholly-owned by large holding companies to purchase the securities offered by such entities even though the holding company does not come within the Schedule E definition of "parent." It is the NASD's belief that enabling such persons to purchase shares of their respective holding company in a public offering is consistent with the policy of permitting employees of members to have an ownership interest in their member-employers.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of section 15A(b)(6) of the Act.[6] Section 15A(b)(6) requires, *inter alia*, that the NASD's rules be designed to "promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing and settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest." The Commission believes that investment by employees in their employers is beneficial to the employee-employer relationship, and thus, is in the interest of investors, and in the public interest. For this reason, and for the reasons stated above, the Commission believes that the proposed rule change satisfies the requirements of section 15A(b)(6) of the Act.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the instant rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, Pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-24399 Filed 10-7-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-31282; File No. SR-PTC-92-11]

Self-Regulatory Organizations; Participants Trust Company; Order Approving on an Accelerated Basis Proposed Rule Change Relating to the Elimination of Pennies From the Face Amount of Certain GNMAs

October 1, 1992.

I. Introduction

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] the Participants Trust Company ("PTC") has filed a proposed rule change with the Securities and Exchange Commission ("Commission") concerning the elimination of pennies (*i.e.*, any amount after the decimal point) from the face amount of certain GNMAs.[2] On September 9, 1992, notice

[3] NASD Securities Dealers Manual, Schedule E to the By-Laws, Section 13, CCH ¶1893.

[4] *Id.* at Article III, Section 1 of the Rules of Fair Practice, CCH ¶2151.06.

[5] Section 9 of Schedule E provides that certain offerings that result in the issuer's affiliation or public ownership of the NASD member shall be subject to the provisions of Schedule E to the same extent as if the transaction had occurred prior to the filing of the offering. *Id.* at Section 9 of Schedule E to the By-Laws, CCH ¶1889.

[6] 15 U.S.C. 78*o*-3 (1988).

[7] 17 CFR 200.30-3(a)(12) (1992).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] PTC's proposed rule change was filed as File No. SR-PTC-92-11 on August 21, 1992. GNMA is the

Continued

of the proposed rule change was published in the **Federal Register** to solicit comments from interested persons.[3] As discussed below, the Commission is approving PTC's proposal on an accelerated basis.

II. Description of the Proposal

PTC proposes to eliminate pennies from the face value of GNMA I and II securities [4] that are carried on deposit at PTC so that all such values will be expressed in whole numbers. PTC further proposes to change the trading multiple from $5,000 for GNMA I's and II's to $1.00 so that any portion of a GNMA which is a multiple of one will be deliverable through PTC, provided the minimum $25,000 denomination is met.

A. Pennies

1. *The Truncation Program*

PTC's proposal arose from discussions among PTC, GNMA, and the MBS Operations Committee of the Public Securities Association ("PSA") [5] regarding ways to increase the efficiency in trading of GNMA securities. As a result of those discussions, PTC proposes to eliminate on its records pennies from GNMA securities issued prior to October 1, 1988 and express the values of those GNMA securities in whole numbers.[6] GNMA securities, for depository purposes, will be rendered similar to FNMAs [7] and Freddie Macs,[8] which are both issued without pennies.

PTC will effect the truncation by performing a one-time elimination of pennies on PTC's records of Participant positions, including securities position reports, Repo In, Repo Out and CLF Positions, for the portion of each GNMA pool the Participant holds which was issued prior to October 1, 1988 (the "Affected Securities"). PTC will create a "dropped penny file" which will record, by pool number and Participant, the value of the pennies eliminated. Once the pennies have been eliminated, Participants will be unable to enter data for the Affected Securities with pennies because that data entry field will be eliminated.

Eliminating pennies from PTC's records will merely represent a change in PTC's record description of the GNMAs it holds on deposit for its Participants. Penny elimination will have no other financial or economic impact on PTC; however, it will have a modest financial effect on Participants over the remaining life of the Affected Securities.

The "jumbo certificate" for Affected Securities held by PTC's custodian, Chemical Bank, at the time of the pennies' elimination, as well as Affected Securities deposited after the conversion, will continue to show their original face value reflecting the presence of the pennies.

Issuers' records will continue to reflect the pennies' presence, and issuers' monthly principal and interest ("P&I") payments to PTC (as the registered owner through its nominee, MBSCC & Co.) on the Affected Securities will be determined accordingly. Nevertheless, PTC will not pass that portion of the P&I attributable to pennies directly to Participants.

On the rare occasion that a Participant should request the withdrawal of the entire balance of an issue on deposit at PTC, Chemical Bank, PTC's custodian, will issue two certificates. One will be issued to the Participant (or in the name requested by the PTC Participant) in the amount requested, less any pennies. Another certificate will be issued for the balance, including pennies, to MBSCC & Co., PTC's nominee name. Because of the *de minimis* amount involved, PTC will request that the GNMA issuer refrain from paying PTC P&I on a balance of less than a dollar.

2. Financial Impact of Penny Truncation

PTC maintains that the financial impact of its penny truncation program will be negligible and well within the industry practice for reconciling *de minimis* differences in deliveries, deposits and the like. PTC has illustrated the financial effect of the penny truncation program as follows:

Assumptions

1. All 53 PTC Participants hold positions of equal amounts of Affected Securities.

2. These Participant positions remain constant for the 12 year (assumed) remaining time to maturity of Affected Securities.

3. There will continue to be 53 PTC Participants for the next 12 years.

Illustrations	
Total face amount of affected securities.	$663 billion
Total Amortized amount of Affected Securities (58.3%).	$386.5 billion
Estimated remaining time to maturity of affected securities.	12 years
Number of GNMA pools affected.	148,681 pools
Total face amount of *pennies* on affected securities.	$76,660
Amortized value of *pennies* on affected securities (58.3%).	$44,692
Less estimated penny recapture at pool maturity.[9]	−$3,717
Net amount of pennies truncated by PTC.	$40,975
Net amount of truncated pennies per year (net pennies divided by 12).	$3,415
Net amount of truncated pennies per Participant per year (*i.e.* net amount of truncated pennies per year divided by 53 Participants).	$64

[9] The amount of the recapture upon redemption is subtracted because when an Affected Security is redeemed, consistent with the procedures for P&I payments, the issuer will remit to PTC the redemption amount calculated on the original face amount (including pennies). PTC will not deduct any amount from the redemption value, but rather, will pass along to Participants the amount received from the issuer.

Because PTC does not operate to make a profit, the value of the truncated pennies will either be passed along as a rebate to Participants or be reflected in PTC's fee structure. Accordingly, the scale and scope of the economic loss to Participants, on the basis of the assumptions described above, is the loss of the use of the funds by Participants.

Assumed annual rate of return for truncated pennies—4% year

Economic loss per participant per year—$2.56

Of course, many Participants act as custodians. Therefore, it will be their customers, rather than PTC's Participants, that will bear the ultimate loss of their pro rata share of PTC's Participants' $2.56 per year loss.

B. Change in Multiple

PTC is also proposing to change the multiple on GNMA I and II securities from $5,000 to $1.00. Currently, the portion of a GNMA pool not divisible by

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Government National Mortgage Association, also known as Ginnie Mae.

[3] Securities Exchange Act Release No. 31135 (September 2, 1992), 57 FR 41158.

[4] There are two types of GNMA securities. GNMA I securities, which were first issued in 1970, have a central transfer agent but no central paying agent. The paying agent for each GNMA I issuer makes Principal and Interest ("P&I") payments directly to the registered owners of each issue. GNMA II securities, which were first introduced in 1983, take advantage of technological improvements made since 1970, thus allowing GNMA II securities issuers to make consolidated payments to registered owners through a centralized paying agent.

[5] The PSA is an association of brokers, dealers and banks active in the U.S. Government securities markets.

[6] Beginning October 1, 1988, GNMA has issued GNMA securities in whole numbers, obviating the need for truncation.

[7] FNMA is the Federal National Mortgage Association, also known as Fannie Mae.

[8] Freddie Mac is the Federal Home Loan Mortgage Corporation (FHLMC).

$5,000 is called a "tail" and cannot be delivered through PTC. By changing the multiple to $1.00, Participants will be able to deliver any portion of a pool, including a "tail," provided the minimum $25,000 denomination is met.

C. Industry Support for Pennies Program

PTC undertook its pennies truncation program following extensive consultation with the PSA and GNMA. In addition, the proposal has been discussed during ten separate meetings of PTC's Operations Committee, the members of which represent PTC's participating banks and dealers, and has the full support of that Committee. Participants have indicated their wish for the change through the PSA, citing the need for the elimination of pennies due to the administrative difficulty pennies produce in their systems. PTC maintains that the elimination of pennies will result in cost savings to the industry.[10] Furthermore, the retention of pennies on GNMAs creates a reconciliation problem because many banks and dealers delete pennies from their records and discrepancies may arise between their records and the records they receive from PTC.

III. Discussion

Sections 17A(b)(3)(A) and (F) of the Act require that a clearing agency is organized and its rules designed to promote the prompt and accurate clearance and settlement of securities transactions for which it is responsible and to assure the safeguarding of funds and securities which are in the custody or control of a clearing agency.[11] As discussed below, the Commission believes that PTC's proposal is consistent with these goals.

PTC estimates the direct financial effect of penny truncation to be minimal.[12] Even without taking into account the recapture of pennies upon the maturity of affected securities, PTC estimates the cost to participants to be $64 per year. With the recapture of pennies, that cost declines to only $2.56, representing the time value of the pennies lost by participants through penny truncation.

While the price of penny truncation is minimal, the continued presence of pennies imposes several burdensome costs on Participants. The presence of pennies increases the likelihood of errors in keystroke entry of transactions. Pennies also cause administrative difficulties in Participants' systems. Additionally, the presence of pennies creates a reconciliation problem because many banks and dealers delete pennies from their records and discrepancies may arise between their records and the records they receive from PTC. The elimination of pennies will result in fewer processing errors and a net cost savings to the industry.[13] Thus, the proposal will promote the prompt and accurate clearance and settlement of securities transactions.

PTC has established procedures designed to safeguard the funds and securities affected by the truncation of pennies from its records. PTC has established procedures to provide for an accurate accounting of the amount eliminated from its records by the proposal through the creation of a dropped penny file. PTC also has established mechanisms to recapture the P&I payments associated with the truncated pennies. Moreover, PTC has agreed to establish a policy for the disposition of truncated pennies that is consistent with section 17A(b)(3)(D) of the Act which requires the equitable allocation of dues, fees and other charges among participants of a clearing agency and to file such policy with the Commission as a proposed rule change under section 19(b) of the Act.[14]

PTC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing in the **Federal Register**. PTC has requested that the Commission approve the proposal by October 1, 1992 to provide sufficient time for its participants to prepare for the truncation of pennies from PTC's records. Effective December 1, 1992, PTC plans to eliminate pennies from its records. The Commission believes that there is good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing in the **Federal Register** because the elimination of pennies from PTC's records will result in savings to investors and those that act on their behalf consistent with the goals of section 17A(a)(1) of the Act.[15]

The staff of the Board of Governors of the Federal Reserve System ("Board of Governors") has stated that it believes that the proposed rule change is consistent with the safeguarding of securities and funds in the custody or control of the clearing agency or for which it is responsible.[16]

IV. Conclusion

For the reasons stated above, the Commission finds that PTC's proposal is consistent with section 17A of the Act. The Commission also finds good cause for approving the proposal prior to the thirtieth day after publication in the **Federal Register**.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[17] that PTC's proposed rule change (SR–PTC–92–11) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–24401 filed 10–7–92; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2594]

California; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on August 29, 1992, I find that Calaveras and Shasta Counties in the State of California constitute a disaster area as a result of damages caused by fires beginning August 16 and continuing through August 20, 1992. Applications for loans for physical damage may be filed until the close of business on October 29, 1992, and for loans for economic injury until the close of business on June 1, 1993, at the address listed below: U.S. Small Business Administration, Disaster Area 4 Office, P.O. Box 13795, Sacramento, CA 95853–4795, or other locally announced locations. In addition, applications for economic injury loans from small businesses located in the contiguous counties of Alpine, Amador, Lassen, Modoc, Plumas, San Joaquin, Siskiyou, Stanislaus, Tehama, Trinity, and Tuolumne in the State of California may be filed until the specified date at the above location.

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[10] Cost savings include fewer keystrokes required to enter penny amounts and less record surveillance required to account for and reconcile penny amounts.

[11] 15 U.S.C. 78q–1(b)(3)(A) and (F) (1988).

[12] See Section II.A.2 *supra*.

[13] This proposed rule change, however, does not authorize PTC participants to eliminate pennies from their records.

[14] Letter from Leopold S. Rassnick, General Counsel, PTC, to Ester Saverson, Jr., Branch Chief, Division of Market Regulation, Commission, dated September 29, 1992.

[15] 15 U.S.C. 78q–1(a)(1).

[16] Telephone conversation between Don Vinnedge, Manager, Trust Activities, Board of Governors, and Ester Saverson, Jr., Branch Chief, Division of Market Regulation, Commission (October 1, 1992).

[17] 15 U.S.C. 78s(b)(2) (1988).

The interest rates are:

	Percent
For physical damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	6.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	8.500
For economic injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 259405 and for economic injury the number is 770200.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: September 8, 1992.

Bernard Kulik,

Assistant Administrator for Disaster Assistance.

[FR Doc. 92-24532 Filed 10-7-92; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2586]

Florida; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on August 24, 1992, and an amendment thereto on August 28, I find that the Counties of Broward, Collier, Dade, and Monroe in the State of Florida constitute a disaster area as a result of damages caused by Hurricane Andrew beginning on August 23, 1992 and continuing. Applications for loans for physical damage may be filed until the close of business on October 22, 1992, and for loans for economic injury until the close of business on May 24, 1993, at the address listed below: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, Georgia 30308, or other locally announced locations. In addition, applications for economic injury loans from small businesses located in the contiguous Counties of Hendry, Lee, and Palm Beach in the State of Florida may be filed until the specified date at the above location.

The interest rates are:

	Percent
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	6.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	8.500
For economic injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 258608 and for economic injury the number is 769200.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: August 31, 1992.

Alfred E. Judd,

Acting Assistant Administrator for Disaster Assistance.

[FR Doc. 92-24533 Filed 10-7-92; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2593]

Territory of Guam; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration of August 28, 1992, I find that the Territory of Guam constitutes a disaster area as a result of damages caused by Typhoon Omar which occurred August 28, 1992 and continuing. Applications for loans for physical damage may be filed until the close of business on October 27, 1992, and for loans for economic injury until the close of business on May 28, 1993, at the address listed below: U.S. Small Business Administration, Disaster Area 4 Office, P.O. Box 13795, Sacramento, CA 95853-4795, or other locally announced locations.

The interest rates are:

	Percent
For physical damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	6.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	8.500
For economic injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 259306 and for economic injury the number is 770100.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: September 8, 1992.

Bernard Kulik,

Assistant Administrator for Disaster Assistance.

[FR Doc. 92-24534 Filed 10-7-92; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2596]

Hawaii; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on September 12, 1992, I find that the Islands of Oahu, Maui, Hawaii, Kauai, Niihau, Lanai, and Kahoolawe constitute a disaster area as a result of damages caused by Hurricane Iniki which occurred September 11, 1992. Applications for loans for physical damage may be filed until the close of business on November 13, 1992, and for loans for economic injury until the close of business on June 14, 1993, at the address listed below: U.S. Small Business Administration, Disaster Area 4 Office, P.O. Box 13795, Sacramento, CA 95853-4795, or other locally announced locations.

The interest rates are:

	Percent
For physical damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	6.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	8.500
For economic injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 259608 and for economic injury the number is 770500.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: September 25, 1992.

Alfred E. Judd,

Acting Assistant Administrator for Disaster Assistance.

[FR Doc. 92-24535 Filed 10-7-92; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2588]

Louisiana; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on August 26, 1992, and amendments thereto on August 26,

28, and 29, I find that the parishes of Ascension, Assumption, East Baton Rouge, East Feliciana, Iberia, Iberville, Jefferson, Lafayette, Lafourche, Pointe Coupee, St. Charles, St. John the Baptist, St. Martin, St. Mary, St. Tammany, Terrebonne, West Baton Rouge, and West Feliciana in the State of Louisiana constitute a disaster area as a result of damages caused by Hurricane Andrew beginning on August 25, 1992 and continuing. Applications for loans for physical damage may be filed until the close of business on October 24, 1992, and for loans for economic injury until the close of business on May 26, 1993, at the address listed below: U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., Suite 102, Ft. Worth, Texas 76155, or other locally announced locations. In addition, applications for economic injury loans from small business located in the contiguous parishes of Acadia, Avoyelles, Concordia, Livingston, Orleans, Plaquemines, St. Helena, St. James, St. Landry, Tangipahoa, Vermilion, and Washington in the State of Louisiana, and the counties of Amite, Hancock, Pearl River, and Wilkinson in the State of Mississippi may be filed until the specified date at the above location.

The interest rates are:

	Percent
For physical damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	6.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	8.500
For economic injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 258808 and for economic injury the number is 769500 for Louisiana and 770300 for Mississippi.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: August 31, 1992.

Alfred E. Judd,

Acting Assistant Administrator for Disaster Assistance.

[FR Doc. 92-24536 Filed 10-7-92; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Economic Injury Disaster Loan Area #7696]

Oklahoma; Declaration of Disaster Loan Area

McIntosh County and the contiguous counties of Haskell, Hughes, Muskogee, Okfuskee, Okmulgee and Pittsburg in the State of Oklahoma constitute an economic injury disaster area as a result of damages caused by a fire which occurred on August 15, 1992, in the City of Checotah. Eligible small businesses without credit available elsewhere and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance until the close of business on June 2, 1993 at the address listed below: U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., Suite 102, Ft. Worth, TX 76155, or other locally announced locations. The interest rate for eligible small businesses and small agricultural cooperatives in 4 percent.

(Catalog of Federal Domestic Assistance Program No. 59002)

Dated: September 2, 1992.

Patricia Saiki,

Administrator.

[FR Doc. 92-24537 Filed 10-7-92; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2590]

Pennsylvania (and Contiguous Counties in Delaware and Maryland); Declaration of Disaster Loan Area

Chester County and the contiguous counties of Berks, Delaware, Lancaster, and Montgomery in the State of Pennsylvania; New Castle County in the State of Delaware; and Cecil County in the State of Maryland constitute a disaster area as a result of damages caused by a fire which occurred on August 26, 1992 in the Seven Oaks Apartment complex in West Chester Borough. Applications for loans for physical damage may be filed until the close of business on November 9, 1992 and for economic injury until the close of business on June 9, 1993 at the address listed below: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308, or other locally announced locations.

The interest rates are:

	Percent
For physical damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	6.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	8.500
For economic injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The numbers assigned to this disaster for physical damage are 259005 for Pennsylvania, 259105 for Delaware, and 259205 for Maryland. For economic injury the numbers are 769800 for Pennsylvania, 769900 for Delaware and 769900 for Maryland.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: September 9, 1992.

Patricia Saiki,

Administrator.

[FR Doc. 92-24538 Filed 10-7-92; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Economic Injury Disaster Loan Area #7687]

Rhode Island (and Contiguous Counties in Massachusetts and Connecticut); Amendment Number 1; Declaration of Disaster Loan Area

The above-numbered declaration is hereby amended to reflect the economy injury numbers assigned to the States of Massachusetts and Connecticut.

The economic injury numbers assigned to this disaster are 768700 for Rhode Island, 768800 for Massachusetts, and 768900 for Connecticut.

All other information remains the same, i.e., the termination date for filing applications is May 19, 1993.

(Catalog of Federal Domestic Assistance Program No. 59002)

Dated: September 1, 1992.

Alfred E. Judd,

Acting Assistant Administrator for Disaster Assistance.

[FR Doc. 92-24539 Filed 10-7-92; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area 2587]

South Dakota; Declaration of Disaster Loan Area

Lake County and the contiguous counties of Brooklings, Kingsbury, McCook, Miner, Minnehaha, and Moody in the State of South Dakota constitute a disaster area as a result of damages

caused by a tornado which occurred on August 9, 1992. Applications for loans for physical damage may be filed until the close of business on November 2, 1992 and for economic injury until the close of business on June 1, 1993 at the address listed below: U.S. Small Business Administration, Disaster Area 4 Office, P.O. Box 13795, Sacramento, CA 95853–4795, or other locally announced locations.

The interest rates are:

	Percent
For physical damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	6.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	8.500
For economic injury:	
Business and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 258712 and for economic injury the number is 769300.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: September 1, 1992.

Patricia Saiki,

Administrator.

[FR Doc. 92–24540 Filed 10–7–92; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2595]

Wisconsin; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on September 2, 1992, I find that Waushara County in the State of Wisconsin constitutes a disaster area as a result of damages caused by severe storms and tornadoes which occurred on August 29, 1992. Applications for loans for physical damage may be filed until the close of business on November 2, 1992, and for loans for economic injury until the close of business on June 2, 1993, at the address listed below: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, Georgia 30308, or other locally announced locations. In addition, applications for economic injury loans from small businesses located in the contiguous Counties of Adams, Green Lake, Marquette, Portage, Waupaca, and Winnebago in the State of Wisconsin may be filed until the specified date at the above location.

The interest rates are:

For physical damage:	Percent
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	6.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	8.500
For economic injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 259512 and for economic injury the number is 770400.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: September 8, 1992.

Bernard Kulik,

Assistant Administrator for Disaster Assistance.

[FR Doc. 92–24541 Filed 10–7–92; 8:45 am]

BILLING CODE 8025–01–M

Region IX Advisory Council; Public Meeting

The U.S. Small Business Administration Region IX Advisory Council, located in the geographical area of San Francisco, will hold a public meeting at 10 a.m. on Thursday, October 22, 1992, at the Federal Reserve Bank of San Francisco, 101 Market Street, San Francisco, California, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. Michael R. Howland, District Director, U.S. Small Business Administration, 211 Main Street, 4th Floor, San Francisco, California 94105–1988, (415) 744–6801.

Dated: September 24, 1992.

Dorothy A. Overal,

Acting Assistant Administrator, Office of Advisory Councils.

[FR Doc. 92–24543 Filed 10–7–92; 8:45 am]

BILLING CODE 8025–01–M

Region IV Advisory Council; Public Meeting

The U.S. Small Business Administration Region IV Advisory Council, located in the geographical area of Jacksonville, will hold a public meeting from 10 a.m.–2 p.m. on Thursday, October 22, 1992, at the First Union National Bank of Florida, 800 N. Magnolia Avenue, 8th Floor, Regional Administration Training Room, Orlando, Florida, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. Thomas M. Short, District Director, U.S. Small Business Administration, 7825 Baymeadows Way, Suite 100–B, Jacksonville, Florida 32256–7504, (904) 443–1900.

Dated: October 1, 1992.

Caroline J. Beeson,

Assistant Administrator, Office of Advisory Councils.

[FR Doc. 92–24545 Filed 10–7–92; 8:45 am]

BILLING CODE 8025–01–M

Region VIII Advisory Council; Public Meeting

The U.S. Small Business Administration Region VIII Advisory Council, located in the geographical area of Denver, will hold a public meeting at 9:30 a.m. on Tuesday, November 17, 1992 at the U.S. Custom House, 721 19th Street, SBA District Office (4th floor), Denver, Colorado, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. Antonio Valdez, District Director, U.S. Small Business Administration, 721 19th Street, Denver, Colorado 80201–0660, (303) 844–4028.

Dated: September 24, 1992.

Dorothy A. Overal,

Acting Assistant Administrator, Office of Advisory Councils.

[FR Doc. 92–24544 Filed 10–7–92; 8:45 am]

BILLING CODE 8025–01–M

Region IX Advisory Council; Public Meeting

The U.S. Small Business Administration Region IX Advisory Council, located in the geographical area of Honolulu, will hold a public meeting at 1 p.m. on Friday, November 6, 1992, at the Prince Kuhio Federal Building, 300 Ala Moana Boulevard, Conference Room 4113A, Honolulu, Hawaii, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. Andrew K. Poepoe, District Director,

U.S. Small Business Administration, 300 Ala Moana Boulevard, room 2213, Honolulu, Hawaii 96850, (808) 541–2990.

Dated: September 28, 1992.

Dorothy A. Overal,

Acting Assistant Administrator, Office of Advisory Councils.

[FR Doc. 92–24546 Filed 10–7–92; 8:45 am]

BILLING CODE 8025–01–M

Region IV Advisory Council; Public Meeting

The U.S. Small Business Administration Region IV Advisory Council, located in the geographical area of Charlotte, will hold a public meeting from 10 a.m. to 3 p.m. on Friday, October 23, 1992 at the U.S. Small Business Administration, 200 North College Street, Charlotte, North Carolina, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. Gary Keel, District Director, U.S. Small Business Administration, 200 North College Street, Suite A 2015, Charlotte, North Carolina 28202, (704) 344–6561.

Dated: September 30, 1992.

Caroline J. Beeson,

Assistant Administrator, Office of Advisory Councils.

[FR Doc. 92–24547 Filed 10–7–92; 8:45 am]

BILLING CODE 8025–01–M

Investment Advisory Council; Meeting

Time and Date: 9 a.m.–5 p.m., Wednesday, October 21, 1992.

Place: The meeting will be held in the Administrator's Conference Room on the seventh floor of SBA Washington Office Center at 409 3rd Street, SW., Washington, DC.

Purpose: The meeting is being held to discuss such matters concerning the Small Business Investment Company (SBIC) and Specialized Small Business Investment Company (SSBIC) Programs as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, contact Wm. H. Malloy III, Esq., room 6300, U.S. Small Business Administration, 409 3rd Street SW., Washington, DC 20416, telephone (202) 205–6510.

Wayne S. Foren,

Associate Administrator for Investment.

[FR Doc. 92–24542 Filed 10–7–92; 8:45 am]

BILLING CODE 8025–01–M

Interest Rates

The interest rate of section 7(a) Small Business Administration direct loans (as amended by Pub. L. 97–35) and the SBA share of immediate participation loans is 7⅝ percent for the fiscal quarter beginning October 1, 1992.

On a quarterly basis, the Small Business Administration also publishes an interest rate called the optional "peg" rate (13 CFR 122.8–4 (d)). This rate is a weighted average cost of money to the government for maturities similar to the average SBA loan. This rate may be used as a base rate for guaranteed fluctuating interest rate SBA loans. For the October-December quarter of FY 93, this rate will be 6⅞ percent.

Dated September 24, 1992.

Charles R. Hertzberg,

Assistant Administrator for Financial Assistance.

[FR Doc. 92–24550 Filed 10–7–92; 8:45 am]

BILLING CODE 8025–01–M

Region X Advisory Council; Public Meeting

The U.S. Small Business Administration Region X Advisory Council, located in the geographical area of Portland, will hold a public meeting at 12 Noon on Friday, October 23 and continuing at 8 a.m. on October 24, 1992 at the Embarcadero Hotel, 1000 Southeast Bay Boulevard, Newport, Oregon, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. John L. Gilman, District Director, U.S Small Business Administration, 222 SW. Columbia, suite 500, Portland, Oregon 97201, (503) 326–5221.

Dated: September 30, 1992.

Caroline J. Beeson,

Assistant Administrator, Office of Advisory Councils.

[FR Doc. 92–24548 Filed 10–7–92; 8:45 am]

BILLING CODE 8025–01–M

Region IV Advisory Council; Public Meeting

The U.S. Small Business Administration Region IV Advisory Council, located in the geographical area of Jackson, will hold a public meeting from 1 p.m. to 4:30 p.m. on Thursday, October 22, and 8:30 a.m. until 12 noon on Friday, October 23, 1992 at the Pickwick Landing State Resort Park Inn, Pickwick, Tennessee, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. Jack Spradling, District Director, U.S. Small Business Administration, 101 W. Capitol Street, Suite 400, Jackson, Mississippi 39201, (601) 965–5371.

Dated: September 30, 1992.

Caroline J. Beeson,

Assistant Administrator, Office of Advisory Councils.

[FR Doc. 92–24549 Filed 10–7–92; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 92–053]

Navigation Safety Advisory Council; Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. 2), notice is hereby given to a meeting of the Navigation Safety Advisory Council to be held at the Hyatt Regency Tampa, Two Tampa City Center, Tampa, FL on Saturday through Tuesday, November 14–17, 1992. The Council will convene for a preliminary plenary session at 5:00 p.m. on Saturday, November 14, 1992.

Committees will meet on Saturday, November 14 from 5:30 to 8:30 p.m. and on Sunday, November 15 from 9 to 12 a.m. and 1 to 4 p.m. Committee discussions will include the following topics:

a. *Navigation Rules:*

1. Relationship between International Rule 5 and the lookout provisions of the STCW Convention.

2. Review of Rule 24(a) lighting requirements for vessels engaged in towing.

b. *Navigation Equipment Committee:*

1. Training for users of Electronic Chart Display (ECDIS).

c. *Human Factors in Navigation Safety:*

1. Bridge procedures and bridge team management.

2. Workhour limitations and fatigue.

3. Conduct of trials in which the officer of the navigational watch acts as the sole lookout in periods of darkness.

d. *Marine Information and Communications:*

1. Review draft U.S. Note to IMO Subcommittee on Standards of Training and Watchkeeping concerning the

relationship between master/navigational watch and the pilot.

The Council will convene in plenary session on Monday, November 16 at 8 a.m. to 5 p.m. and reconvene on Tuesday, November 17 at 8 a.m. to 12 noon to hear Committee status reports and any matters properly brought before the Council.

The meeting is open to the public. Persons wishing to make oral statements should notify the Executive Director at the address below no later than Friday, November 13, 1992. Any person may present a written statement to the Council at any time without advance notice.

FOR FURTHER INFORMATION CONTACT: Margie G. Hegy, Executive Director, Navigation Safety Advisory Council, U.S. Coast Guard (G–NSR–3), Washington, DC 20593–0001, Telephone (202) 267–0415.

Dated: October 1, 1992.

W.J. Ecker,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 92–24559 Filed 10–07–92; 8:45 am]

BILLING CODE 4910–14–M

Federal Aviation Administration

Proposed Advisory Circular 21–CGSR: Computer Generated/Stored Records

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of and requests comments on proposed Advisory Circular (AC) 21–CGSR, Computer Generated/Stored Records. The proposed AC, provides information and guidance concerning computerized manufacturing and quality records systems. This notice is necessary to give all interested persons an opportunity to present views on the proposed AC.

DATES: Comments must be received on or before December 7, 1992.

ADDRESSES: Copies of the proposed AC 21–CGSR can be obtained from and comments may be returned, to the following address: Federal Aviation Administration, Production Certification Branch, AIR–220, Aircraft Manufacturing Division, Aircraft Certification Service, 800 Independence Avenue, SW., Washington, DC, 20591.

FOR FURTHER INFORMATION CONTACT: Ava Robison, Federal Aviation Administration, Production Certification Branch, AIR–220, Aircraft Manufacturing Division, room 333, Aircraft Certification Service, 800 Independence Avenue SW., Washington, DC 20591, (202) 267–7147.

SUPPLEMENTARY INFORMATION:

Background

This AC is an acceptable means, but not the only means of demonstrating compliance with the requirements of Federal Aviation Regulations part 21, Certification Procedures for Products and Parts. The proposed AC provides information and guidance on the elements of a computer system that generates and stores aviation manufacturing and quality records.

Comments Invited

Interested persons are invited to comment on the proposed AC by submitting such written data, views, or arguments as they desire to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Director, Aircraft Certification Service, before issuing a final AC. Comments submitted must identify the proposed AC 21–CGSR, File Number PO–220–0171.

Comments received on the proposed AC 21–CGSR may be examined, before and after the comment closing date in room 333, FAA Headquarters Building (FOB–10A), 800 Independence Avenue, SW., Washington, DC 20591, between 8:30 a.m. and 4:30 p.m.

Issued in Washington, DC, on September 21, 1992.

Terry A. Allen,

Acting Manager, Aircraft Manufacturing Division.

[FR Doc. 92–24354 Filed 10–7–92; 8:45 am]

BILLING CODE 4910–13–M

Proposed Advisory Circular 21–PAS; Quality Assurance Controls for Product Acceptance Software

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of and requests comments on proposed Advisory Circular (AC) 21–PAS Quality Assurance Controls for Product Acceptance Software. The proposed AC provides information and guidance concerning control of product acceptance software. This notice is necessary to give all interested persons an opportunity to present views on the proposed AC.

DATES: Comments must be received by December 7, 1992.

ADDRESSES: Copies of the proposed AC 21–PAS can be obtained from, and comments may be returned to, the following address: Federal Aviation Administration, Production Certification Branch, AIR–220, Aircraft Manufacturing Division, Aircraft Certification Service, 800 Independence Avenue SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Ava Robinson, Federal Aviation Administration, Production Certification Branch, AIR–220, Aircraft Manufacturing Division, room 333, Aircraft Certification Service, 800 Independence Avenue SW., Washington, DC 20591, (202) 267–7146.

SUPPLEMENTARY INFORMATION:

Background

Prior to this proposed AC, the FAA has not issued any guidance concerning ground based software. Since most production approval holders use some form of software to test or inspect products, this proposed AC is intented to provide information on ensuring inspection/test software remains in the released configuration. The proposed AC 21–PAS provides information and guidance on the control of software used to demonstrate conformance with Federal Aviation Administration approved type design. This proposed AC is an acceptable means, but not the only means of demonstrating compliance with the requirements of Federal Aviation Regulations Part 21, Certification Procedures for Products and Parts.

Comments Invited

Interested persons are invited to comment on the proposed AC by submitting such written data, views, or arguments as they desire to the address specified above. Comments submitted must identify the proposed AC 21–PAS, File Number PO–220–0221. All communications received on or before the closing date for comments specified above will be considered by the Director, Aircraft Certification Service, before issuing a final AC.

Comments received on the proposed AC 21–PAS may be examined, before and after the comment closing date in room 333, FAA Headquarters Building (FOB–10A), 800 Independence Avenue SW., Washington, DC 20591, between 8:30 a.m. and 4:30 p.m.

Issued in Washington, DC, on September 21, 1992.

Terry A. Allen,

Acting Manager, Aircraft Manufacturing Division.

[FR Doc. 92–24355 Filed 10–7–92; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement; Craven County, NC

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Craven County, North Carolina.

FOR FURTHER INFORMATION CONTACT: Roy C. Shelton, Operations Engineer, 310 New Bern Avenue, Suite 410, Raleigh, North Carolina 27601, Telephone: (919) 856–4350.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the North Carolina Department of Transportation (NCDOT), will prepare an environmental impact statement (EIS) on a proposal to improve U.S. Route 70 (U.S. 70) in Craven County, North Carolina. The proposed improvement would involve the reconstruction of existing U.S. 70 through the town of Havelock, North Carolina, or a bypass on new location for a distance of about 10 miles.

Improvements to the corridor are considered necessary for the existing and projected traffic demand. Alternatives under consideration include (1) No-build; (2) using alternative travel modes; (3) improving the existing highway; and (4) constructing a four-lane, limited access highway on new location.

Letters describing the proposed action and soliciting comments have been sent to appropriate Federal, State and local agencies. A series of public meetings and a public hearing will be held. Public notice will be given of the time and place of the meetings and hearing. The draft EIS will be available for public and agency review and comment prior to the hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provide above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: October 1, 1992.

Roy C. Shelton,

Operations Engineer, Raleigh, North Carolina.

[FR Doc. 92–24473 Filed 10–7–92; 8:45 am]

BILLING CODE 4910–22–M

Federal Aviation Administration

Intent To prepare an Environmental Document and To Conduct Scoping by Meeting for Establishing and Operating a Terminal Doppler Weather Radar (TDWR) to Serve the Port Columbus International Airport, Columbus, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to last paragraph regarding the scoping meeting date.

SUMMARY: This is to correct the date the scoping meeting which will be conducted at the Licking Height School, Summit Station, Ohio.

In the notice document 92–20406, page 38710, issue of Wednesday, August 26, 1992, second column, under "The FAA plans to conduct a scoping meeting on * * *", change the date to October 6, 1992.

Issued in Des Plaines, Illinois, on October 2, 1992.

Russell P. Williams,

Manager, Resource and Planning Branch, AGL–420, Airway Facilities Division, Great Lakes Region.

[FR Doc. 92–24509 Filed 10–07–92; 8:45 am]

BILLING CODE 4910–13–M

Intent To Rule on Application To Impose and Use a Passenger Facility Charge (PFC) at Pellston Regional Airport, Pellston, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use a PFC at Pellston Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before November 9, 1992.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address:

Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Raymond L. Thompson, Airport Manager, of the County of Emmet, Michigan, at the following address: Pellston Regional Airport, Pelston, Michigan 49769.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the County of Emmet under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Dean C. Nitz, Acting Manager, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111, (313) 487–7300. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use a PFC at Pellston Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 190) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On September 21, 1992, the FAA determined that the application to impose and use a PFC submitted by County of Emmet, Michigan was subsequently complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than December 22, 1992.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: October 1, 1992.

Proposed charge expiration date: December 31, 1997.

Total estimated PFC revenue: $440,875.

Brief description of proposed project(s):

Project To Impose and Use PFC

Construct aircraft ramp
Heated sand storage building
Rehabilitate Runway 14/32
Rehabilitate Taxiway G

Project Only To Impose a PFC

Blast pads for Runways 14 and 32, and paved shoulders for Runway 14/32
Acquire physically challenged passengers (PCP) equipment
Acquire snow removal equipment (broom)
Runway 5/23 lighting

Rehabilitate taxiways A and B

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxis and Charters.

Any person may inspect the application in person at the FAA office listed above under **"FOR FURTHER INFORMATION CONTACT"**.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Pellston Regional Airport.

Issued in Des Plaines, Illinois on October 1, 1992.

James H. Washington,

Acting Manager, Airports Division Great Lakes Region.

[FR Doc. 92-24508 Filed 10-7-92; 8:45 am]

BILLING CODE 4910-13-M

National Highway Traffic Safety Administration

[Docket No. 92-34; Notice 2]

Mack Trucks Inc.; Grant of Petition for Determination of Inconsequential Noncompliance

This notice grants the petition by Mack Trucks, Inc. (Mack) of Allentown, Pennsylvania, to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for a noncompliance with Federal Motor Vehicle Safety Standard No. 108, "Lamps, Reflective Devices, and Associated Equipment." The basis of the petition was that the noncompliance is inconsequential as it relates to motor vehicle safety.

Notice of receipt of the petition was published on July 17, 1992, and an opportunity afforded for comment (57 FR 31748).

From December 1, 1991 through March 26, 1992, Mack installed front-mounted turn signal lamps on approximately 1,000 RB, RD, RM, DM, and DMM model trucks. The turn signal lamps on these vehicles do not comply with the photometric requirements of Standard No. 108.

Effective December 1, 1991, paragraph S5.1.1 of Standard No. 108 was amended to incorporate by reference Society of Automotive engineers Standard J1395 April 1985. Paragraph 5.3.2 of J1395 states that the functional lighted lens area of a single lamp, each compartment of a multiple compartment, and each lamp of a multiple lamp arrangement shall be at least 75 cm^2 (11.635 in^2). The subject lamps have functional lighted lens area of 72 cm^2 (11.18 in^2). Mack supported its petition for inconsequential noncompliance with the following:

Mack Trucks, Inc. has utilized the lamps in question * * * since approximately 1979 without problem.

Each lamp provides 11.18 square inches (slightly more than 72 square centimeters) of functional lighted lens area compared to the required 75 square centimeters (equivalent to 11.625 square inches), a difference of less than 3 square centimeters (0.445 square inch).

Mack Trucks, Inc. believes that, based on the subject lamps' minimal difference (less than 4%) from the required functional lighted lens area and our use of these same lamps for more than ten (10) years on the same vehicle models without problem, the noncompliance * * * does not affect the safety of our vehicles and is, therefore, inconsequential.

No comments were received on the petition.

The noncompliance represented by this petition is clearly distinguishable from that which is the basis for the typical inconsequentiality petition. In the usual situation, the standard represents a fixed level of performance which the petitioner's vehicle or equipment item fails to reach. In this instance, the performance of the equipment has not varied, but the level of performance prescribed has changed. Had petitioner's vehicles been manufactured before December 1, 1991, they would have complied with Standard No. 108. The new requirement, effective that date, was intended to improve motor vehicle safety. Failure to meet the new requirement results, of course, in a noncompliance, but the noncompliance represents a level of safety performance previously considered an acceptable minimum standard. Further, the margin of failure in this instance is slight, less than half a square inch per lamp, as is the number of vehicles involved, 1,000 units.

There is precedent for granting a petition where compliance with previously existing requirements has become a noncompliance because of an amendment to a standard. These precedents have concerned Standard No. 101 where failure to provide certain identification symbols was deemed inconsequential because the identification that was provided met the requirement in effect before the effective date of the symbol requirement (Ford Motor Co., Docket IP81-5; Toyota Motor Co., Docket IP81-8; Volvo White, Docket IP85-7). The agency sees no substantive difference between those petitions, and the petition under consideration. Accordingly, in consideration of the foregoing, the petitioner has met its burden of persuasion that the noncompliance herein described is inconsequential as it relates to motor vehicle safety, and its petition is granted.

Authority: 15 U.S.C. 1417; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8.

Issued on: September 30, 1992.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 92-24487 Filed 10-7-92; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: October 2, 1992.

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: 1545-0201

Form Number: IRS Form 5308

Type of Review: Revision

Title: Request for Change in Plan/Trust Year

Description: Form 5308 is used to request permission to change the plan or trust year for a pension benefit plan. The information submitted is used in determining whether IRS should grant permission for the change.

Respondents: Businesses or other for-profit

Estimated Number of Respondents: 480

Estimated Burden Hours Per Respondent: 44 minutes

Frequency of Response: On occasion

Estimated Total Reporting Burden: 339 hours

OMB Number: 1545-1074

Form Number: IRS Form 8743

Type of Review: Revision

Title: Information on Fuel Inventories and Sales

Description: Form 8743 is used to provide information on fuel inventories and sales. This form enables IRS to monitor the excise tax liability for all taxable fuels. (Internal Revenue Code (IRS) sections 4081, 4091, 4041 and 4042). The form will be

filed by refiners, importers or terminal operators.
Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations
Estimated Number of Respondents/ Recordkeepers: 108,000
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—6 hours, 13 minutes
Learning about the law or the form—18 minutes
Preparing and sending the form to the IRS—28 minutes
Frequency of Response: Quarterly
Estimated Total Reporting/ Recordkeeping Burden: 748,440 hours
Clearance Officer: Garrick Shear (202) 622-3869, 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. 92-24397 Filed 10-7-92; 8:45 am]

BILLING CODE 4830-01-M

Public Information Collection Requirements Submitted to OMB for Review

Date: October 2, 1992.

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.

Departmental Offices

OMB Number: 1505-0065.
Form Number: None.
Type of Review: Extension.
Title: Privacy Act—Form of Request for Notification of Whether a Record Exists, Form of Request to Amend Records, Form of Request for Appeal of Refusal to Amend Records.
Description: Requests records pursuant to the Privacy Act. The Privacy Act provides that a U.S. citizen or resident alien may seek access or amendment to their records or any information pertaining to them maintained in a system of records and referenced by personal name or identifier.
Respondents: Individuals or households.
Estimated Number of Respondents: 4,822.
Estimated Burden Hours Per Response: 1 hour.
Frequency of Response: Other (voluntarily as required).
Estimated Total Reporting Burden: 4,822 hours.
OMB Number: 1505-0066.
Form Number: None.
Type of Review: Extension.
Title: FOIA—Form of Request for Information and Appeal of Denial, Waiver of Fees.
Description: Requests information pursuant to the Freedom of Information (FOI) Act. The public submits FOI requests in writing, signed by requestor; reasonably describe records; agree to pay fees for search, review and duplication or state up to what amount will be paid; state whether copies are desired or inspection of records is preferred.
Respondents: Individuals or households, State or local governments, Farms, Businesses or other for-profit, Non-profit institutions, Small businesses or organizations.
Estimated Number of Respondents: 56,017.
Estimated Burden Hours Per Response: 45 minutes.
Frequency of Response: Other (voluntarily as required).
Estimated Total Reporting Burden: 42,013 hours.
Clearance Officer: Lois K. Holland, (202) 622-1563, Departmental Offices, room 3171, Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.
OMB Reviewer: Milo Sunderhauf (202) 395-6880 cost of money to the government for maturities similar to the average, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 92-24490 Filed 10-7-92; 8:45 am]

BILLING CODE 4810-25-M

[Directive Number: 15-21]

International Transport of Good Under Cover of Transport International Routier-International Road Transport (TIR) Carnets

Date: September 30, 1992.

1. *Delegation.* The Commissioner, Under States Customs Service is hereby delegated authority to take all necessary action required of the United States under Section 1 of Article 5 of the Customs Convention on the International Transport of Goods Under Cover of TIR Carnets (TIR Convention). The Commissioner shall exercise this authority subject to the conditions set forth in section 2 of said Article 5.

2. *Cancellation.* Treasury Directive 15-21, "International Transport of Goods Under Cover of TIR Carnets," dated July 30, 1986, is superseded.

3. *Office of Primary Interest.* Office of the Assistant Secretary (Enforcement).

Peter K. Nunez,

Assistant Secretary (Enforcement).

[FR Doc. 92-24398 Filed 12-7-92; 8:45 am]

BILLING CODE 4810-25-M

Office of Thrift Supervision

[AC-57; OTS No. 5020]

Jersey Shore Savings and Loan Association, Toms River, NJ; Final Action; Approval of Voluntary Supervisory Conversion Application

Notice is hereby given that, on September 9, 1992, the Deputy Director of Washington Operations approved the application of Jersey Shore Savings and Loan Association, Toms River, New Jersey, for permission to convert to the stock form of organization, in a voluntary supervisiory conversion in connection with a holding company acquisition. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC. 20552, and the Northeast Regional Office, Office of Thrift Supervision, 10 Exchange Place Centre, 18th Floor, Jersey City, New Jersey 07302.

Dated: October 2, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92-24497 Filed 10-7-92; 8:45 am]

BILLING CODE 6720-01-M

[AC-56; OTS No. 5333]

Peoples Federal Savings and Loan Association, Conway, SC; Final Action; Approval of Voluntary Supervisory Conversion Application

Notice is hereby given that, on August 21, 1992, the Deputy Director for Washington Operations approved the application of Peoples Federal Savings and Loan Association, Conway, South Carolina, for permission to convert to the stock form of organization, in a voluntary supervisory conversion in connection with a holding company acquisition. Copies of the

application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and the Southeast Regional Office, Office of Thrift Supervision, 1475 Peachtree Street, NE., Atlanta, Georgia 30309.

Dated: October 2, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92-24496 Filed 10-7-92; 8:45 am]

BILLING CODE 6720-01-M

UNITED STATES COMMISSION ON IMPROVING THE EFFECTIVENESS OF THE UNITED NATIONS

Meeting and Hearing

AGENCY: United States Commission on Improving the Effectiveness of the United Nations.

ACTION: Notice of public meeting.

SUMMARY: The purpose of this meeting is to obtain information on the subject of United Nations reform and U.S. policy toward the United Nations, and to conduct other Commission business. The meeting will be open to the public.

DATES: October 23, 1992, 9:30 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Ceremonial Court Room at the U.S. Federal Court House, 601 Market Street, Philadelphia, PA.

FOR FURTHER INFORMATION CONTACT: Gregory Wierzynski, Executive Director, 1825 Connecticut Avenue, suite 1011, Washington, DC 20009; telephone: (202) 673-5012; telefax: (202) 673-5007.

Experts or representatives of interested groups wishing to present testimony should contact the Executive Director and submit a summary of their presentation by October 16, 1992.

Citizens interested in testifying may sign up with the Court Security Officer between 9:30 a.m. and 11 a.m. on the date of the meeting and will be selected on a first-come, first-served basis. Testimony will be heard after 3:30 p.m. Citizen witnesses must limit their statements to five minutes but may submit additional material for the record.

The U.S. Commission on Improving the Effectiveness of the United Nations was established by Public Law 100-204, 101 Stat. 1934 (22 U.S.C. 287 note). The Commission is charged with preparing and submitting to the President and Congress a report containing a detailed statement of its findings, conclusions and recommendations regarding reform of the United Nations system and the role of the United States in the United Nations system. The Commission is bipartisan and is privately-funded.

The Commission members are: Representative James A. Leach and Charles M. Lichenstein, Co-Chairs; Thomas F. Eagleton, Representative Edward F. Feighan, Edwin J. Feulner, Jr., Walter Hoffmann, Senator Nancy L. Kassebaum, Alan L. Keyes, Jeane J. Kirkpatrick, Peter M. Leslie, Gary E. MacDougal, Reverend Richard John Neuhaus, Senator Clairborne Pell, Jerome J. Shestack, Harris O. Schoenberg, and Jose S. Sorzano.

Dated: October 5, 1992.

Gregory Wierzynski,

Executive Director.

[FR Doc. 92-24505 Filed 10-7-92; 8:45 am]

BILLING CODE 6820-BB-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, "The Greek Miracle: Classical Sculpture from the Dawn of Democracy, the Fifth Century, B.C." (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 lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the National Gallery of Art, Washington, DC from on or about November 22, 1992 to on or about February 7, 1993, and at The Metropolitan Museum of Art, New York, New York, from on or about March 11, 1993, to on or about May 23, 1993, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register.**

Dated: October 2, 1992.

Alberto J. Mora,

General Counsel.

[FR Doc. 92-24438 Filed 10-7-92; 8:45 am]

BILLING CODE 8230-01-M

[1] A copy of this list may be obtained by contacting Mr. Paul W. Manning of the Office of the General Counsel of USIA. The telephone number is 202/619-6827, and the address is room 700, U.S. Information Agency, 301 Fourth Street, SW., Washington DC 20547.

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233-3021.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395-7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before November 9, 1992.

Dated: September 29, 1992.

By direction of the Secretary.

B. Michael Berger, Director,

Records Management Service.

Reinstatement

1. Veterans Application for Work-Study Allowance, VA Form 20-8691.
2. The form is needed to identify those veteran-students who wish to apply for the supplemental VA work-study benefit and to assist VA in selecting eligible applicants.
3. Individuals or households.
4. 5,375 hours.
5. 15 minutes.
6. On occasion.
7. 21,500 respondents.

[FR Doc. 92-24482 Filed 10-7-92; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 196
Thursday, October 8, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Tuesday, October 13, 1992.

PLACE: Marriner S. Eccles Federal Reserve Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previous 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: October 5, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-24620 Filed 10-5-92; 4:52 pm]

BILLING CODE 6210-01-M

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Meetings

TIME AND DATE: 9:30 a.m., Tuesday, October 13, 1992.

PLACE: Filene Board Room, 7th Floor, 1776 G Street, NW., Washington, DC 20456.

STATUS: Open.

BOARD BRIEFINGS:

1. Central Liquidity Facility Report and Report on CLF Lending Rate.
2. Insurance Fund Report.

MATTERS TO BE CONSIDERED:

1. Aproval of Minutes of Previous Open Meeting.
2. Proposed Charter Application for Citizens Community Federal Credit Union, Omaha, Nebraska.
3. Proposed Charter Application for South Central Los Angeles Community Development Federal Credit Union, Los Angeles, CA.
4. Proposed Amendment: Part 710, NCUA's Rules and Regulations, Voluntary Liquidation of Federal Credit Unions.
5. Final Amendment: Section 700.1(i), NCUA's Rules and Regulations, Risk Assets.
6. Fiscal Year 1993 Overhead Transfer Rate.

RECESS: 10:45 a.m.

TIME AND DATE: 11:00 a.m., Tuesday, October 13, 1992.

PLACE: Filene Board Room, 7th Floor, 1776 G Street, NW., Washington, DC 20456.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Closed Meeting.
2. Administrative Action under Sections 206 and 208 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).
3. Central Liquidity Facility Investment Policy. Closed pursuant to exemption (9)(B).
4. National Credit Union Share Insurance Fund Investment Policy. Closed pursuant to exemption (9)(B).
5. Request from a Corporate Credit Union for a Determination under Section 704.1(b) of NCUA's Rules and Regulations. Closed pursuant to exemptions (8) and (9)(A)(ii).
6. Personnel Action. Closed pursuant to exemptions (2), (6), (8), and (10).

FOR MORE INFORMATION CONTACT: Beckey Baker, Secretary of the Board, Telephone (202) 682-9600.

Beckey Baker,

Secretry of the Board.

[FR Doc. 92-24662 Filed 10-6-92; 2:32 pm]

BILLING CODE 7535-01-M

Corrections

Federal Register
Vol. 57, No. 196
Thursday, October 8, 1992

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 HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 447

[BPD-396-F]

RIN 0938-AD 12

Medicare and Medicaid; Requirements for Long Term Care Facilities

Correction

In rule document 92-22313 beginning on page 43922, in the issue of Wednesday, September 23, 1992, make the following correction:

§ 447.255 [Corrected]

On page 43924, in the first column, in § 447.255(a), in the third line, "submitted" should read "substituted" and "of" should read "or".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

[Regulation No. 16]

RIN 0960-AC66

Supplemental Security Income for the Aged, Blind, and Disabled Resources and Exclusions; Definition of Resources

Correction

In rule document 92-18874 beginning on page 35459 in the issue of Monday, August 10, 1992, make the following corrections:

1. On page 35459, in the third column, under **SUMMARY:**, in the fourth line from the bottom, "eligible" should read "ineligible".

2. On page 35460, in the first column, in the fourth line from the bottom, "not" should read "are".

BILLING CODE 1505-01-D

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research Act of 1984—"Feasibility Study on Using Molecular Sieves for Diesel NO_x Control"

Correction

In notice document 92-18988 appearing on page 35845 in the issue of Tuesday, August 11, 1992, in the second column, in the third paragraph, in the sixth line, "of" the second time it appears should read "on" and "FR 35887." should read "FR 35877."

BILLING CODE 1505-01-D

federal register

Thursday
October 8, 1992

Part II

Department of the Interior

Bureau of Indian Affairs

Indian Gaming; Notices

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved Tribal-State Compact.

SUMMARY: Pursuant to 25 U.S.C. 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the Federal Register, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority has approved the Southern Ute Indian Tribe—State of Colorado Gaming Compact, which was enacted on August 11, 1992.

DATES: This action is effective on October 8, 1992.

ADDRESSES: Office of Tribal Services, Bureau of Indian Affairs, Department of the Interior, MS/MIB 4603, 1849 "C" Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Hilda Manuel, Chief, Division of Tribal Government Services, Bureau of Indian Affairs, Washington, DC 20240, (202) 208–7446.

Dated: October 1, 1992.

William D. Bettenberg,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 92–24435 Filed 10–7–92; 8:45 am]

BILLING CODE 4310–02–M

federal register

Thursday
October 8, 1992

Part III

Environmental Protection Agency

Daminozide; Notice of Final Determination for Non-Food Uses and Termination of the Daminozide Special Review

ENVIRONMENTAL PROTECTION AGENCY

[OPP-30000/40D; FRL-4163-7]

Daminozide: Notice of Final Determination for Non-Food Uses and Termination of the Daminozide Special Review

AGENCY: Environmental Protection Agency (EPA).
ACTION: Final determination and termination of Special Review.

SUMMARY: This Notice concludes the Special Review of the non-food uses of daminozide and announces the Agency's decision to retain these registrations without requiring modification to the label. This Notice also contains the Agency's revised estimate of the dietary risks based on the conclusions of the 2-year UDMH cancer studies in mice and rats.

ADDRESSES: Requests for a hearing must be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, 401 M St., SW., Washington, DC, 20460.

Additional information supporting this action is available for public inspection from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays in the Public Response and Program Resource Branch, Field Operations Division, (H7506C), Office of Pesticide Programs, Environmental Protection Agency, Room 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: By Mail: Thomas Moriarty, Special Review Branch, Special Review and Reregistration Division (H7508W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office Location and Telephone Number: Third Floor, CS #1, 2800 Jefferson Davis Highway, Arlington, VA 22202 (703) 308-8035.

SUPPLEMENTARY INFORMATION:
Electronic Availability: This document is available as an electronic file on *The Federal Bulletin Board* at 9 a.m. on the date of publication in the **Federal Register**. By modem dial 202-512-1387 or call 202-512-1530 for disks or paper copies. This file is available in Postscript, Wordperfect 5.1 and ASCII.

This Notice announces EPA's decision to retain the non-food use registrations of products which contain daminozide as the active ingredient. This Notice concludes EPA's administrative Special Review of the risks and benefits of daminozide which was initiated in a Federal Register notice of July 1984 (49 FR 29186). A notice of Preliminary Determination (PD 2/3) was issued in May 1989 (54 FR 22558), and supporting documents, including the Technical Support Document (TSD), for the PD 2/3 were made available to any requesting party at that time. The Agency received a request by the sole registrant of daminozide products, Uniroyal Chemical Company, in October 1989, to voluntarily withdraw all food-use registrations of daminozide. A notice was published in November 1989 (54 FR 47492) which canceled all food use registrations of daminozide as of November 17, 1989. This Notice concludes EPA's special review of the non-food uses of daminozide.

This Notice is organized into nine units. Unit I is an introduction providing background information and the legal basis for this action. Unit II is a summary of previous regulatory actions concerning the registration of daminozide products. Unit III presents EPA's summary of the toxicological concerns, cancer classification, and comments received in response to EPA's PD2/3. Unit IV contains EPA's exposure assessment, final worker risk estimates and additional comments received in response to the PD 2/3. Unit V contains the benefits associated with daminozide and comments received in response to the PD 2/3. Unit VI contains EPA's reassessment of the dietary risks of daminozide based on the refined cancer potency factor (Q_1^*) and Unit VII summarizes EPA's risk/benefit determination and announces EPA's regulatory action. Finally, Unit VIII announces the availability of the Public Docket and Unit IX lists references contained in this document.

I. Introduction

Daminozide is the common name for butanedioic acid mono (2,2-dimethylhydrazine). The sole registrant, Uniroyal Chemical Company (Uniroyal), produces four products, B-Nine, B-Nine SP, Alar 85, and Alar Technical, which contain daminozide as the active ingredient. Daminozide is a systemic growth regulator registered only for use on ornamental and bedding plants. Daminozide also was registered for use on food crops; however, Uniroyal Chemical Company voluntarily canceled all food use registrations of daminozide on November 14, 1989.

Legal background. Before a pesticide product may be lawfully sold or distributed in either intrastate or interstate commerce, the product must be registered by EPA (FIFRA sections 3(a) and 12(a)(1)). A registration is a license allowing a pesticide product to be sold and distributed for specified uses in accordance with specified use instructions, precautions, and other terms and conditions of a registration.

In order to obtain a registration for a pesticide under FIFRA, an applicant must demonstrate that the pesticide satisfies the statutory standard for registration. The standard requires, among other things, that the pesticide perform its intended function without causing "unreasonable adverse effects on the environment." The term "unreasonable adverse effects on the environment" is defined in FIFRA section 2(bb), as "any unreasonable risk to man or the environment, taking into account the economic, social and environmental costs and benefits of the use of any pesticide." This standard requires a finding that the benefits of the use of the pesticide exceed the risks of use when the pesticide is used in compliance with the terms and conditions of registration or in accordance with commonly recognized practices.

The burden of proving that a pesticide satisfies the statutory standard is on the proponent of registration and continues as long as the registration remains in effect. Under FIFRA section 6, the Administrator may issue a Notice of Intent to Cancel the registration of a pesticide product whenever it is determined that the pesticide product causes unreasonable adverse effects on the environment. EPA created the Special Review process to facilitate the identification of pesticide uses which may not satisfy the statutory requirements for registration and to provide an informal procedure to gather and evaluate information about the risks and benefits of these uses.

A Special Review is initiated if a pesticide meets or exceeds the risk criteria set out in the regulations at 40 CFR part 154. EPA announces that a Special Review is initiated by issuing a notice in the **Federal Register**. Registrants and other interested persons are invited to review the data upon which the Special Review is based and to submit data and information to rebut EPA's conclusions by showing that EPA's initial determination was in error, or by showing that use of the pesticide is not likely to result in any significant risk to human health or the environment. In addition to submitting rebuttal evidence, persons wishing to comment may submit relevant information to aid in the determination of whether the economic, social, and environmental benefits of the pesticide outweigh the risks of use. After reviewing the comments received and other relevant material obtained during the Special Review process, EPA makes a decision

on the future status of registrations of the pesticide.

The Special Review process may be concluded in various ways depending upon the outcome of EPA's risk/benefit assessment. If EPA concludes that all of its risk concerns have been adequately rebutted, the pesticide registration will be maintained unchanged, or if all its risk concerns are adequately addressed through label changes, a special review may be terminated after such label changes. If, however, all risk concerns are not rebutted, EPA will proceed to a full risk/benefit assessment. In determining whether the use of a pesticide poses risks which are greater than its benefits, EPA considers possible changes to the terms and conditions of registration which can reduce risks, and what impacts such modifications may have on the benefits of use. If EPA determines that such changes reduce risks to the level where the benefits outweigh the risks, it may require that such changes be made in the terms and conditions of the registration. Alternatively, EPA may determine that no changes in the terms and conditions of a registration will adequately assure that use of the pesticide will not pose any unreasonable adverse effects. If EPA makes such a determination, it may seek cancellation, and, if necessary, suspension. In either case, EPA must issue a Notice of Intent to Suspend or a Notice of Intent to Cancel the registrations. If the Notice requires changes in the terms and conditions of registration, cancellation may be avoided by making the specified changes set forth in the Notice, if possible. Adversely affected persons, including registrants and applicants for registration, may also request a hearing on the suspension or cancellation of a specified registration or use.

II. Regulatory History

A. Rebuttable Presumption Against Registration

In June 1984, EPA (the Agency) issued a Notice of Rebuttable Presumption Against Registration (RPAR) for Daminozide which initiated what is now called the Special Review Process (40 CFR part 154). The RPAR included the Notice of Initiation of Special Review (PD 1) (49 FR 29186, July 18, 1984), and the Pesticide Registration Standard and Guidance Document. At that time, the Agency was concerned about carcinogenic risk to the general population through dietary exposure to daminozide. Data available at that time indicated that daminozide was carcinogenic in laboratory mice and rats. The Agency was specifically concerned about risk from unsymmetrical dimethylhydrazine (UDMH). UDMH, a known carcinogen in laboratory animals, is a contaminant of commercial daminozide and a metabolite of daminozide once it enters the body.

EPA believed, however, that the risks associated with the non-food uses of daminozide were not significant. The Agency noted that daminozide was not rapidly absorbed through the skin and exposure to applicators was low (Ref. 1).

Through the PD 1, the Agency solicited information from registrants, applicants, and interested parties to help conduct a full risk/benefit analysis of daminozide. Information which the Agency solicited included information on the importance of daminozide to agriculture and information regarding alternative growth regulators such as their efficacy and use patterns.

B. Draft Preliminary and Final Determination (PD 2/3/4), Data Call-In, and Tolerance Extension.

In September 1985 EPA submitted a Draft PD 2/3/4 to the Scientific Advisory Panel (SAP) and the U.S. Department of Agriculture, as required by FIFRA. The Agency intended to proceed with a PD 2/3/4 in order to expedite the special review of daminozide. (A PD 2/3/4 allows the Agency to propose and finalize a regulatory action in one step whereas it is usually completed in two; first by proposing a regulatory action (PD 2/3) then by finalizing a regulatory action (PD 4)).

The SAP believed that the animal cancer data were insufficient to support a quantitative risk assessment and recommended that EPA require additional data before taking regulatory action on daminozide. Although EPA is not legally bound by the SAP's opinion, the Panel is an integral part of Agency decisions. In this case, EPA accepted the Panel's recommendations and did not proceed with the Draft PD 2/3/4 but required additional data, and took a number of steps to reduce risk to the general population as discussed below.

A Data Call-In Notice was issued in 1986 which required a number of additional studies including cancer studies in mice and rats, a greenhouse worker exposure study, and a market basket survey to measure levels of daminozide and UDMH on produce in the grocery store (Ref. 2).

To reduce risk to the general population, the Agency reduced the application rate of daminozide on apples and added to the label an advisory statement which cautioned against the use of daminozide on apples intended for processing. (Levels of UDMH increase when apples are processed). EPA also reduced the tolerance for daminozide residues on apples from 30 ppm to 20 ppm and set the tolerance to expire on July 31, 1987. The Agency intended to reevaluate the daminozide tolerance on apples after the preliminary results of the residue and market basket survey data were available. However, data available at that time (July 1987), showed that the tolerances could not be lowered without making some legally treated apples over tolerance and therefore, subject to seizure. Thus, EPA extended the 20 ppm apple tolerance until January 31, 1989 (51 FR 12889). In early 1989, the Agency reevaluated the tolerance in light of the interim results of the cancer studies.

In January 1989, EPA estimated, based on the interim results of the UDMH cancer studies in rat and mice, that the dietary risk to the general population from daminozide/UDMH was 4.9×10^{-5}. In considering the estimated risk, EPA believed that regulatory action should be pursued but that the daminozide tolerance, due to expire January 31, 1989, could be extended for an additional 18 months without posing an unreasonable risk to the general population.

C. Preliminary Determination to Cancel Certain Daminozide Product Registrations and Draft Notice of Intent to Cancel (PD 2/3)

In preparing the PD 2/3, which was issued in May 1989 (54 FR 22558), EPA reviewed all comments and data submitted in response to the PD 1, the historical toxicity data, and the interim results of the UDMH cancer studies required through the 1986 Data Call-In.

The Agency's primary concern about exposure to daminozide/UDMH was cancer. Although EPA had classified both UDMH and daminozide as Group B2, probable human, carcinogens, (Ref. 3), EPA had identified UDMH as the primary agent of concern. At that time EPA did not estimate risk from daminozide, as it did for UDMH. Although daminozide produced the same types of tumors as did UDMH (hemangiomas/hemangiosarcomas), the incidences of tumors showed trends but no statistical significance by pairwise comparison with controls (Ref. 3).

The interim results of the UDMH cancer studies in mice and rats were received in March 1988. Based on the report from the mouse study, EPA calculated an interim UDMH cancer potency factor (Q_1^*). (Cancer potency is a quantitative measure or estimate of the relationship between exposure to

increasing doses of the chemical substance in question and the increased severity of the carcinogenic effect, such as the number of tumors). EPA believed that vascular tumors (hemangiosarcoma) were appropriate to use in calculating the interim Q_1^* because: (1) It is a relatively uncommon malignant tumor and has a low background rate in laboratory mice and rats; and (2) it is the same type of tumor seen in the earlier UDMH studies (Toth 1973, Toth 1977a, Toth 1977b, and Haun 1984) (Refs. 4, 5, 6, and 7).

Dietary risk was estimated using the interim (Q_1^*) and exposure estimates derived from levels of daminozide residues on treated foods, as observed in the market basket survey, and consumption patterns. EPA estimated dietary risk to the general population from exposure to UDMH to be 4.9×10^{-5}. Full descriptions of exposure estimates and risk calculations, including exposure and risk calculations to various subpopulations, are contained in the Technical Support Document (TSD) (Ref. 3).

Risk from the non-food uses of daminozide was estimated using exposure estimates from a surrogate worker exposure study. Although Uniroyal submitted a daminozide worker exposure study in 1986, it was found to be inadequate to assess exposure, therefore, EPA used surrogate data (Sumagic PRG [Merricks, 1987]) it had on hand to estimate daminozide exposure to greenhouse workers. The Agency estimated risk to a worker performing the three job functions of mixer, loader, and applicator, to be 2×10^{-6} (Ref. 3).

The Agency also conducted a preliminary analysis of the benefits associated with the use of daminozide on both food and non-food crops. The analysis was conducted to determine the potential economic impacts to consumers, retailers, and producers if daminozide was not available. The Agency also considered the biological effects of daminozide, methods of application, and projected biological and economic impacts if daminozide were canceled, as well as the most likely chemical and non-chemical alternatives if daminozide were not available. EPA's preliminary benefit analysis of the following sites is contained in the TSD: apples (several varieties), peanuts, cherries, grapes, peaches, nectarines, pears and tomatoes (tomato transplants), and the non-food uses of daminozide.

EPA believed that the carcinogenic risk posed to the general population from the food uses of daminozide outweighed the benefits and therefore proposed to cancel all food-use registrations of daminozide. However, EPA proposed to retain the non-food uses of daminozide without modification to the label because it believed that the risks posed to greenhouse workers were outweighed by the benefits.

D. Notice of Receipt of Request to Cancel and Termination of Special Review of Food Uses, and Final Tolerance Rule

In October 1989, Uniroyal Chemical Company requested voluntary cancellation of all food-use registrations of daminozide. On November 14, 1989, the Agency published a notice (54 FR 47492) announcing its receipt of this request. That notice announced Uniroyal's commitment to submit the final report of the 2-year UDMH cancer studies and also announced EPA's intention to conduct a final dietary and worker risk assessment based on the conclusions of these studies. Subsequently, the Agency received the final reports of the UDMH cancer studies. In addition, Uniroyal Chemical Company voluntarily submitted worker exposure and metabolism data. The final dietary and worker risk assessments, based on these data, are contained in Units III, IV, VI, and VII of this Notice.

The Agency issued the Proposed Rule to revoke tolerances for daminozide on September 7, 1989 (54 FR 37278) the final tolerance rule for daminozide was published on March 19, 1990 (55 FR 10218), which set all tolerances for daminozide residues on food and feed crops at zero as of May 31, 1991.

E. Conclusion of Special Review (PD 4)

EPA's assessment and final decision regarding the risks and benefits for the non-food uses of daminozide are set forth in this document. This Notice also contains the Agency's reassessment of the dietary risks of daminozide. Based on both newly received data (including the final report of the rat and mouse cancer studies, new worker exposure data, and metabolism data), and historical daminozide data, EPA has determined that benefits from daminozide use on ornamental and bedding crops outweigh the risks to workers. Accordingly, EPA is announcing its decision to retain all non-food use registrations of daminozide without change to the label. Additionally, dietary risks have been reestimated using the final report of the UDMH cancer study in mice. EPA maintains that the dietary risk posed to the general population in 1989 was unreasonable and the Agency does not intend to change its regulatory position on the food-uses of daminozide. A more detailed discussion of the risks and benefits associated with the non-food uses is contained in the latter part of this Notice.

III. Summary of Toxicological Concerns and Agency Evaluation of Comments

The principal effect of concern with daminozide is the carcinogenic potential of UDMH. In 1989, EPA based its Preliminary Determination on the interim results of the UDMH cancer studies in rats and mice (Uniroyal 1988c, 1988d, 1988e). The final report of these studies has been submitted and EPA finds these data appropriate for cancer risk assessment (Ref. 8). EPA has considered, as a whole, the data from both the interim and the final reports of the cancer studies in evaluating the carcinogenic potential of daminozide and UDMH.

A. Carcinogenicity

1. *Hazard identification.* In one study (Uniroyal 1988c), Fisher 344 rats were administered UDMH in their drinking water at concentration levels of 0, 1, 50, or 100 ppm for 2 years. Gross findings included a dose related increase in cloudy corneas in both sexes which was not statistically significant. Non-neoplastic lesions were not observed in the test animals with the exception of bile duct hyperplasia and inflammation of the liver in the highest dosed males and in the mid-dose and high-dose females. The females also showed a statistically significant increasing trend of liver tumors (hepatocellular carcinomas/adenocarcinomas) and of combined liver tumors (hepatocellular adenomas and carcinomas/adenocarcinomas). Females also exhibited a significant increase in combined adenomas and carcinomas in the 50 and 100 ppm concentration groups when compared to controls. There were no other dose-related increases of neoplasms at other sites in females (Ref. 9).

A second study (Uniroyal 1988d), was conducted in which CD-1 mice were administered UDMH in their drinking water for 2 years at concentration levels of 0, 1, 5, or 10 ppm in males and 0, 1, 5, or 20 ppm in females. In the second year of the study, survival decreased in both sexes in all dose groups. However, only the top dose of both the males and females showed a substantial decrease in survival when compared to controls at termination. At week 78, the male mice showed a noticeable decrease in the survival (ranging from 62 percent to 86 percent), when compared to controls. There was an increase in the incidence

of brown pigment in the liver of both males and females in the mid-dose and high-dose groups between 12 and 24 months. Both males and females also showed a significant increase in the number of combined lung tumors (bronchioloalveolar adenoma and/or carcinoma). Male and female mice also showed an increase in the occurrence of bronchioloalveolar adenomas (Ref. 9).

In the third study (Uniroyal 1988e), CD–1 mice were administered UDMH at concentration levels of 0, 40, or 80 ppm in drinking water. The majority of deaths of the test animals occurred in the second year of the study. While there was a significant decrease in the survival of males only in the 80 ppm dose group, the females showed a significant decrease in survival in both the 40 ppm and 80 ppm dose groups. There was a biologically significant dose-related decrease in water consumption in male mice receiving 40 and 80 ppm when compared to controls. There was an increased incidence of lung tumors (alveolar/bronchiolar adenomas) and vascular liver tumors (hemangioma and hemangiosarcomas) which were considered dose related. In the 80 ppm dose group, both sexes showed both a pair-wise comparison, and a significant increasing trend in hemangiosarcomas and bronchioloalveolar tumors. In pair-wise comparison to the controls with the 40 ppm dose group, there was a significant increasing trend of vascular tumors (hemangiosarcomas) and combined vascular and lung adenomas (hemangiomas and lung adenomas/carcinomas). The males in the 40 ppm dose group also showed an increase in the incidence of combined vascular tumors (hemangiomas and hemangioma sarcomas), combined lung tumors (lung adenomas/carcinomas), and combined hepatocellular tumors (adenomas and/or carcinomas).

Female mice in the 80 ppm dose group showed significant increased trends and significant pair-wise comparison to controls for vascular tumors (hemangiosarcomas), combined vascular tumors (hemangiomas and hemangiosarcomas), lung tumors (bronchioloalveolar adenomas) and combined lung tumors (bronchioloalveolar adenomas and bronchioloalveolar carcinomas). In pair-wise comparison to controls, the 40 ppm dose-group showed a significant increase in vascular tumors (hemangiosarcomas), combined vascular tumors (hemangiomas and hemangioma sarcomas), in hepatocellular adenomas, in lung tumors (bronchioloalveolar adenomas) and combined lung tumors (bronchioloalveolar adenomas and/or carcinomas) (Ref. 9)

2. *Metabolism.* A metabolism study in miniature swine was submitted to the Agency in 1987 (Ref. 10). Daminozide was administered in a single 5 mg/kg oral dose and after 96 hours was found in almost all tissues at levels up to 73 ppb, with the liver and kidney containing the highest levels. Analysis indicated that both ^{14}C-UDMH and ^{14}C-dimethylnitrosamine (DMN), which are derived from ^{14}C-daminozide, were excreted in the urine. From urinalysis, EPA estimated that only about 16 percent of the oral dose could be shown to be absorbed and approximately 1 percent (1 ppm) of daminozide is metabolized to UDMH. DMN levels in the urine, collected in the first 24 hours, ranged from 0.01 to 0.89 ppm.

3. *Mutagenicity.* While daminozide has been demonstrated to be negative for mutagenicity in a number of studies, UDMH has shown positive mutagenic activity in various other studies which have been submitted to the Agency. The Agency also notes that the open literature reports UDMH as positive for mutagenicity. Based on the available information, the Agency remains concerned about the mutagenic potential of UDMH (Refs. 11, 12, 13, 14, 15, and 16), although the available data does not conclusively indicate whether UDMH is mutagenic. In addition, further metabolism of UDMH can result in the formation of DMN, a well known mutagen.

B. Unit Risk (Q_1^*)

EPA calculated the final Q_1^* based on the incidence of hemangiosarcomas from all sites of the male CD–1 mouse study (the combined report of Uniroyal 1988d and Uniroyal 1988e) (Ref. 17). The Agency did not combine the incidence of the hemangioma with that of the incidence of the hemangiosarcoma in deriving the cancer potency factor because the data were insufficient to demonstrate evidence that the benign hemangioma progressed to the malignant hemangiosarcoma (Ref. 18). The number of hemangiomas were few and, even if included, would only marginally affect the unit risk estimate.

The Agency is also aware of the increased incidence of lung tumors in both the lower dose CD–1 mouse study and in the higher dose CD–1 mouse study. However, the refined unit risk estimate of UDMH (the final UDMH Q_1^*) did not reflect the incidence of these tumors for the following reasons: (1) Historical incidences of lung tumors in the CD–1 male mouse were high, ranging from 17 percent to 52 percent; (2) incidences of lung adenomas and lung carcinomas in the two highest dose groups (40 and 80 ppm) were significantly higher than controls but were not dose-related; (3) the lung tumors were found only at interim or terminal sacrifice, or when animals died at unscheduled times during the study; (4) the hemangiosarcoma, which has a low background incidence in CD–1 mice, was a rapidly fatal tumor that was observed throughout the study; and, (5) the lung tumors were not able to be correctly evaluated by the same statistical method as the hemangiosarcoma (Ref. 18). The unit risk estimate of lung tumors alone, of hemangiosarcomas alone, and of the combined incidence of lung tumors and hemangiosarcomas were computed. The unit risk estimate of the combined tumors was within one order of magnitude of that of the unit risk estimate of the hemangiosarcoma. Use of either the combined unit risk estimate or that of the hemangiosarcoma alone would have a similar impact on the final regulatory decision.

Finally, the Agency did not use data from the rat study to estimate a UDMH Q_1^* because only a small number of tumors occurred in only one sex and only at relatively high doses. The Agency believes that the responses observed in the rat study contrasted with the concerns raised by the responses seen in the mouse studies (Ref. 18).

A separate cancer potency factor was calculated using data from male mice $(0.46\ (mg/kg/day)^{-1})$ and data from the female mice $(0.31\ (mg/kg/day)^{-1})$. EPA used the more conservative Q_1^* from the male mice, $0.46\ (mg/kg/day)^{-1}$, for the final risk assessment (Ref. 19). Because both sexes of mice had statistically significant increases in mortality with increasing doses of UDMH, hemangiosarcomas from all sites were evaluated by Peto's Prevalence test and the cancer potency factor was evaluated by the time-to-tumor Weibull83 model (Ref. 17).

C. Cancer Classification

EPA classified UDMH and the parent compound daminozide as Group B2 carcinogens using the weight-of-the-evidence approach and following the classification scheme set forth in EPA's Carcinogen Risk Assessment Guidelines (51 FR 33992, September 24, 1986). "Weight-of-the-evidence" is an approach the Agency uses to evaluate how likely an agent is to be a human carcinogen by taking into consideration the quality and adequacy of the data and the kinds and consistency of responses induced by a suspect

carcinogen. Using this approach the Agency has determined that there is sufficient evidence from animals to consider the agent(s) probable human carcinogens. Evidence is "sufficient" for an agent to be classified as a probable human carcinogen if there is an increased incidence of tumors: (a) In multiple species or strains of test animals; or (b) in multiple experiments, for example, with different dose levels or routes of administration; or (c) to an unusual degree in a single experiment with regard to high incidence, unusual site or type of tumor, or early age at onset.

UDMH is an inherent component of commercial daminozide and daminozide also breaks down to UDMH. The Agency, therefore, has classified both the metabolite, UDMH, and the parent, daminozide, as B2 carcinogens (Ref. 9) based on the following evidence:

(1) Administration of UDMH to female rats for 2 years was associated with a significant increase of combined liver tumors (carcinomas, and combined adenomas and carcinomas). In male and female mice, there was a statistically significant increase in the incidence of lung tumors.

(2) Administration of UDMH to male and female mice was associated with a significant increased incidence of vascular tumors (hemangiosarcomas and combined hemangiomas and hemangiosarcomas) at the mid-dose and high-dose levels.

(3) UDMH is structurally related to other hydrazine compounds (such as 1,2 dimethylhydrazine and monomethylhydrazine) which produce vascular and lung tumors.

(4) Data from a metabolism study in miniature pigs indicated the presence of DMN in the urine. DMN has been reported to produce vascular and pulmonary tumors identical to those evoked by both daminozide and UDMH.

(5) The mutagenicity concern for both UDMH and DMN also supports the Agency's cancer classification.

D. Comments and EPA Response

In response to the PD 2/3, EPA received comments regarding the Agency's evaluation of daminozide (Ref. 20). Several comments were submitted regarding the Agency's toxicological evaluation of daminozide/UDMH. A summary of these comments and the Agency's response follows.

Comment. Uniroyal believes that the Group B2 cancer classification of daminozide is inappropriate and that the weight-of-the-evidence supports a finding that daminozide is not carcinogenic. Uniroyal cited a 1988 study in which rats were administered daminozide in doses up to 10,000 ppm with no reported carcinogenic effects related to the administration of daminozide. Uniroyal also believes that several studies (Toth 77 and NCI 78), which the Agency used to support its regulatory decision, are not appropriate for cancer risk assessment because of irregularities in the design of the studies and in the way the studies were conducted.

EPA Response. With respect to the cancer classification of daminozide, the Agency recognizes that the cancer study in rats, as cited above, did not produce an overt incidence of tumors, as compared to the responses observed in mice. Additionally, the Agency notes that the gastrointestinal tract of various animal species to which alar is exposed, vary considerably and some species are more able to tolerate metabolic insult while others have a greater capability to cause (by metabolic conversion) or allow (due to appropriate pH condition) the breakdown of daminozide to UDMH. Since daminozide has been shown to breakdown to UDMH in several species, e.g., mice, guinea pig and swine, although not in the rat, the Agency believes that it is only appropriate that both the parent compound, daminozide, and the metabolite compound, UDMH, be classified as Group B2 carcinogens.

With respect to the Agency's use of the Toth 77 and NCI 78 studies, the Agency did not base its 1989 proposed regulatory decision on these two studies, rather the Agency used these two studies only as support for its proposed regulatory decision. (Indeed, the Scientific Advisory Panel recommended that the Agency not perform a quantitative risk assessment based on these studies.) The Agency, therefore, called for more definitive cancer data through a Data Call In, issued in 1986. The cancer studies in mice and rats provided the basis for the Agency's 1989 proposed regulatory decision.

Comment. Uniroyal believes that the dose levels used in the higher-dose cancer study in mice (40 or 80 ppm) exceed the Maximum Tolerated Dose (MTD), and therefore, the study is inappropriate to use for human health risk assessment. Uniroyal contends that the administered dose levels produced extreme levels of toxicity in the test animals, resulting in an increased rate of mortality. Uniroyal believes the high rate of mortality in the test animals makes data produced from this study highly questionable.

EPA Response. The Agency requested an additional carcinogenicity study in mice at doses of 0, 40, or 80 ppm because it did not believe that the MTD would be achieved with doses of 10 or 20 ppm of UDMH in the lower dose studies. The Agency consulted with other governmental testing facilities knowledgeable in setting test dose levels in cancer studies in order to establish dosing levels which should be administered to show whether UDMH was in fact carcinogenic.

Although the top doses produced some toxicity, the Agency believes that the high mortality, resulting from tumor rupture, cannot be attributed to exceedance of the MTD. Additionally, data from both higher dose and lower dose cancer studies with UDMH, when considered together show a good dose relationship with statistical significance, thereby arguing against the MTD being exceeded. The Agency, therefore, considered it appropriate to use the data from both the higher dose and the lower dose studies to assess human risk.

Comment. Uniroyal believes that the open literature on UDMH mutagenicity, which supports EPA's concern, is not accurate. UDMH mutagenicity data, as reported in the open literature, show that mutagenic responses are associated with cytotoxicity and are found only in studies where the test material was contaminated with dimethylnitrosamine (DMN).

EPA Response. The Agency believes that at least a portion of UDMH is nitrosated in humans, as it is in some animals, such as mice, due to the gastric acid secretions of a low pH. The Agency realizes that nitrosation does not occur in all mutagenicity studies. However, the Agency maintains a concern for the mutagenic potential of UDMH because it is capable of nitrosating, in the human, to DMN which is a known mutagenic agent.

IV. Worker Exposure and Risk

At the time of the PD 2/3, the Agency made a number of assumptions in estimating worker exposure to UDMH because of the limited data available at that time. Since then, the Agency has received a number of studies which have allowed EPA to refine the exposure assessment. Exposure to UDMH comes from two sources: (1) Conversion of daminozide to UDMH when it is ingested or absorbed through the skin or lungs; and (2) presence of UDMH as a contaminant in the commercial product and conversion of daminozide to UDMH when left standing in the mixing tank. The total risk from UDMH is estimated by adding together the individual risk from each source of exposure to UDMH.

A. Worker Exposure

A worker exposure study submitted by Uniroyal in 1990 measured dermal and inhalation exposure to daminozide from application to ornamentals in a greenhouse. Exposure was monitored separately for the mixer/loader job function and the applicator job function.

The Agency calculates the unit of exposure to daminozide by dividing the total dermal and inhalation exposure by the volume of pesticide handled. Actual dermal exposure to the body (exposure to the skin under the clothing) was measured using whole body dosimeters (long cotton briefs worn under the workers' typical clothing and over the workers' underwear). Dermal exposure to the face and neck was measured by extracts from swabs and exposure to the hands was measured from washing in detergent or rinsing in distilled water. Total dermal exposure was measured as the sum of all the residues from the upper and lower body dosimeters and residues measured from the facial and neck swab and hand rinse (Ref. 21).

Inhalation exposure was measured with an air sampling pump attached to the collar of the worker. Calculations for inhalation exposure were based on a respiration rate of 45 liters/minute for all job functions (Ref. 21).

Based on information provided by commercial growers and Uniroyal, EPA used the following parameters to estimate exposure to workers in both large and small greenhouses: (1) Workers in a large-greenhouse operation handle approximately 24 pounds of daminozide annually and small-greenhouse workers handle 10 pounds annually; (2) maximum exposure to a worker was estimated assuming that a worker will have a combined job function of mixer, loader, and applicator; (3) daminozide is not applied on consecutive days and the maximum period of exposure for any one application is 5 hours; (4) maximum concentration of the active ingredient is used (5,000 ppm solution); and is applied two times per year on multiple crops; and (5) daminozide is applied as a fine spray (as opposed to a coarse spray) which results in higher exposure (Ref. 22).

1. *Exposure to UDMH metabolized from daminozide.* Based on the miniature pig metabolism study, EPA has determined that upon entering the gut, about 1 percent of daminozide is metabolized to UDMH (Ref. 10). However, a worker's dermal and/or inhalation exposure to daminozide most likely does not result in metabolic conversion of daminozide to UDMH in the gut but elsewhere in the body e.g., the bloodstream. Because the exact rate of metabolic conversion in the body is not known, EPA assumes it to be the same as the 1 percent rate at which daminozide is metabolized to UDMH in the gut. EPA believes that this may be an overestimation because the metabolic conversion rate in the gut is generally higher (due to pH), than in other parts of the body. A worker's exposure to UDMH which is metabolically converted from daminozide is summarized in Column A of Tables 1a and 1b. in Unit. IV.A.2 of this notice.

2. *Exposure to UDMH from contamination and hydrolysis of daminozide.* The other source of UDMH exposure is from that amount of UDMH which is present as a contaminant of the commercial daminozide product. Commercial daminozide is comprised of 0.005 percent UDMH (Ref. 3). Exposure to UDMH also comes from the conversion (hydrolysis) of daminozide to UDMH when a solution of daminozide is mixed and stands in the tank before being used. EPA calculates that 0.012 percent of a daminozide solution hydrolyzes to UDMH when allowed to stand in the tank for 24 hours (the daminozide label states that spray and stock solutions must be used within 24 hours) (Ref. 22). Estimated exposure to UDMH as a contaminant, and UDMH as a hydrolysis product, is calculated as 0.005 percent and 0.012 percent respectively, of exposure to the parent compound, daminozide. A worker's dermal exposure to UDMH as a contaminant and hydrolysis product of daminozide is summarized in columns B and C of the following Table 1a:

TABLE 1a.—DERMAL EXPOSURE TO DAMINOZIDE AND UDMH

(in mg/kg/year, for combined function of mixer/loader/applicator)

Site	Daminozide	UDMH		
		A	B	C
	Exposure to daminozide (parent)	1 percent UDMH metabolized (in the body from the parent)	0.005 percent UDMH as part of the parent (contaminant)	UDMH hydrolyzed from the parent (0.012 percent)
Large Greenhouses	0.18	1.8×10^{-3}	9.0×10^{-6}	2.2×10^{-5}
Small Greenhouses	0.075	0.75×10^{-3}	3.8×10^{-6}	9.0×10^{-6}

A worker's inhalation exposure to UDMH which is metabolically converted from daminozide, which is a contaminant of commercial daminozide and is hydrolized from commercial daminozide is summarized in columns A, B, and C, respectively of the following Table 1b:

TABLE 1b.—INHALATION EXPOSURE TO DAMINOZIDE AND UDMH

(in mg/kg/year, for combined function of mixer/loader/applicator)

Site	Daminozide	UDMH		
		A	B	C
	Exposure to daminozide (parent)	1 percent UDMH metabolized (in the body from the parent)	0.005 percent UDMH as part of the parent (contaminant)	UDMH hydrolyzed from the parent (0.012 percent)
Large Greenhouses	0.12	1.2×10^{-3}	6.0×10^{-6}	1.4×10^{-5}

TABLE 1b.—INHALATION EXPOSURE TO DAMINOZIDE AND UDMH—Continued

(in mg/kg/year, for combined function of mixer/loader/applicator)

Site	Daminozide	UDMH		
	Exposure to daminozide (parent)	A	B	C
		1 percent UDMH metabolized (in the body from the parent)	0.005 percent UDMH as part of the parent (contaminant)	UDMH hydrolyzed from the parent (0.012 percent)
Small Greenhouses	0.049	4.9×10^{-4}	2.5×10^{-6}	5.9×10^{-6}

B. Absorption

1. *UDMH as a contaminant and hydrolyzed from daminozide.* The UDMH which is a contaminant of daminozide and which is hydrolyzed from daminozide comes into contact with the worker as UDMH per se and therefore, the rate of dermal absorption of UDMH is necessary to determine the dose.

A dermal absorption study was recently submitted by Uniroyal which demonstrated dermal absorption and bioavailability of UDMH in rats (Ref. 23). Based on this study, the bioavailability of UDMH for the treatment group which most closely matched a worker's potential exposure ranged from 11 percent to 24 percent. EPA used a UDMH dermal absorption rate of 20 percent as a reasonable worst-case scenario (Ref. 24).

The Agency assumes that 100 percent of the UDMH which is present as a contaminant of daminozide or is hydrolyzed from daminozide is absorbed into the lungs.

2. *UDMH which is metabolically converted from daminozide.* Metabolic conversion of daminozide to UDMH occurs once daminozide has entered the body. The rate of dermal absorption of daminozide is known to be 1 percent and the amount of daminozide which is metabolically converted to UDMH once it enters the body, is assumed to be 1 percent (Ref. 25).

EPA also assumes that 100 percent of that which is metabolically converted from daminozide to UDMH is absorbed into the lungs (Ref. 24).

C. Risk Characterization

Lifetime risk to workers may be estimated by converting exposure estimates to a lifetime average daily dose (LADD) and multiplying by the refined UDMH Q_1^* of 0.46 $(mg/kg/day)^{-1}$. The LADD converts yearly exposure to an average daily dose over a worker's lifetime (EPA assumes a professional applicator works 35 years of a 70-year lifetime). The Agency has calculated risk to workers using an approach which measures exposure to UDMH. Exposure to UDMH comes from three sources; as a contaminant of daminozide, as a hydrolysis product of daminozide and as a metabolic break down product of daminozide.

Inhalation and dermal risk from UDMH which is metabolically converted from daminozide is broken down in the following Table 2a:

TABLE 2a.—RISK FROM UDMH WHICH IS METABOLICALLY CONVERTED FROM DAMINOZIDE

Site	Dose[1] (mg/kg/day)	LADD (mg/kg/day)	Q_1^* $(mg/kg/day^{-1})$	Lifetime Risk
Large Greenhouse				
Inhalation	4.8×10^{-4}	6.6×10^{-7}	0.46	3.0×10^{-7}
Dermal	7.2×10^{-6}	9.9×10^{-9}	0.46	4.6×10^{-9}
Small Greenhouse				
Inhalation	2.0×10^{-4}	2.7×10^{-7}	0.46	1.2×10^{-7}
Dermal	3.0×10^{-6}	4.1×10^{-9}	0.46	1.9×10^{-9}

[1] Dose values are derived from Column A of Table 1a and 1b. Inhalation values are adjusted for molecular weight (UDMH is 40 percent by weight of daminozide). Dermal values are adjusted for molecular weight and dermal absorption (daminozide is dermally adsorbed at a rate of 1 percent).

Inhalation and dermal risk from UDMH which is a contaminant of, and hydrolized from commercial daminozide is broken down in the following Table 2b:

TABLE 2b.—RISK FROM UDMH AS A CONTAMINANT AND HYDROLYSIS PRODUCTS OF DAMINOZIDE

Site	Dose[1] (mg/kg/day)	LADD (mg/kg/day)	Q_1^* $(mg/kg/day^{-1})$	Lifetime Risk
Large Greenhouse				
Inhalation	1.2×10^{-5}	1.6×10^{-8}	0.46	7.4×10^{-9}
Dermal	3.6×10^{-6}	4.9×10^{-9}	0.46	2.3×10^{-9}
Small Greenhouse				
Inhalation	4.9×10^{-6}	6.7×10^{-9}	0.46	3.1×10^{-9}
Dermal	1.5×10^{-6}	2.0×10^{-9}	0.46	9.2×10^{-10}

[1] Dose values are derived by adding values from Columns B and C of Tables 1a and 1b. Inhalation values are taken from Column C and adjusted by 40 percent and added to Column B, dermal values are taken from Column B adjusted by 20 percent and added to Column C which is adjusted by 20 percent and 40 percent.

Risk from UDMH is the sum of the risks posed by UDMH from all three sources of exposure to UDMH. Incorporating a number of worst-case assumptions stated earlier in this Notice, EPA estimates upper-bound lifetime risk to workers in large greenhouses to be 3.1×10^{-7} and to workers in small greenhouses to be 1.2×10^{-7}, as summarized in the following Table 3 (Ref. 24):

TABLE 3.—TOTAL LIFETIME RISK FROM UDMH[1]

Site	Risk
Large Greenhouses	3.1×10^{-7}
Small Greenhouses	1.2×10^{-7}

[1] Includes risk from all sources, combined inhalation and dermal exposure and for the combined function of mixer/loader and applicator.

D. Risk From Daminozide

The Agency has regulated daminozide based on a risk estimate using an approach that measures exposure to UDMH. The Agency has also conducted an alternative UDMH risk assessment based on an approach that measures the effects of daminozide per se, since daminozide is also a Group B2 carcinogen. The Agency used a daminozide Q_1^* and estimates of exposure to daminozide to estimate worker risk. Based on this alternative approach, the Agency estimates upper-bound lifetime risk to workers to be 1.5×10^{-6} and 5.8×10^{-7}, for large and small greenhouses respectively. Although the Agency has performed this alternative risk assessment based on daminozide, the Agency believes that the preferable method to estimating risk is to measure exposure from UDMH per se. Therefore, the Agency has based its regulatory decision on risk estimates which come from measuring exposure to UDMH. The risk estimate based on daminozide is explained in full detail in the *Addendum to the Daminozide Risk Assessment*, available in the public docket.

E. Comments and EPA's Response

Only one comment was received regarding the Agency's non-dietary risk assessment. This comment and the Agency's response are summarized below.

Comment. Uniroyal believes that exposure estimates taken from the surrogate worker exposure study, (Sumagic PRG [Merricks, 1987]), which the Agency used to estimate exposure for the PD 2/3, are too high. Uniroyal also cites a surrogate study available in the open literature which shows that exposure values to workers are lower than those used by the Agency.

Response. At the time of the PD 2/3, the Agency chose to use the surrogate data which were available and considered appropriate instead of searching through the open literature for another appropriate exposure study. As stated earlier in this Notice, EPA found that risk to greenhouse workers, based on the surrogate exposure data, was acceptable.

The current exposure assessment incorporates a number of assumptions which are different from those incorporated into the exposure estimates of the PD 2/3; therefore, a direct comparison between the two is not possible. However, although the present exposure estimates and those contained in the PD 2/3 are based on different assumptions, EPA believes that the present exposure estimates are the most accurate measure of exposure available.

V. Summary of Benefits Assessment and Agency Evaluation of Comments

The benefits of a pesticide product are characterized by estimating the potential economic impact to industry, retailers, and consumers if that product were no longer available and more expensive or less efficacious alternatives are used.

Daminozide is a plant growth regulator used on a number of bedding plants and other crops including the following: chrysanthemums, azaleas, easter lilies, and hydrangeas. Daminozide is used to create a more compact plant with greener foliage (i.e., thicker and less elongated stems), to increase plant longevity, and to facilitate plant transport. Growers like daminozide because of its predictable effects and ease of application ("spray to run-off"). In 1989, EPA estimated that 90 percent of all potted chrysanthemums and 40 percent to 50 percent of the 65 million square feet of bedding plants were treated with daminozide. EPA believes that the use of daminozide on bedding plants, mums, and poinsettias has remained relatively constant.

There are four likely chemical alternatives to daminozide: uniconazole, ancymidol, chlormequat, and paclobutrazol. In addition, there are non-chemical controls such as withholding water or fertilizer, controlling light, and maintaining lower room temperatures. No single chemical alternative, however, can produce the same effects as daminozide. All the chemical alternatives are limited by either a narrower use spectrum, phytotoxic effects, or higher costs. Non-chemical controls are also considered less desirable because of adverse effects on the plants such as delayed flowering, discoloration, and smaller leaves.

To produce the same effects as daminozide, several chemical alternatives would have to be used in combination. The result would be increased cost (estimated to range from 10 to 20 times higher) and a lower quality of plant.

EPA currently estimates that the potential economic loss from cancellation of daminozide would be no less than $15 million and could be considerably higher (Ref. 26). This estimate is based on the incremental increase in costs resulting from the substitution of alternatives for daminozide.

Comments and EPA's Response. The Agency received one written comment in response to the PD 2/3 regarding the Agency's benefits analysis. This comment and the Agency's response are summarized below:

Comment. Uniroyal stated that EPA underestimated the benefits of daminozide use on ornamentals. The Society of American Florists and the Professional Plant Growers Association also submitted written comments in support of this position.

Response. Although Uniroyal agreed with EPA's estimate of percent crop treated, Uniroyal's figures for gross poundage of daminozide used on ornamentals are higher than those used by the Agency. EPA accepts the Uniroyal number for usage of daminozide on ornamentals.

Uniroyal also states that, based on the opinions of five university horticulturists and extension personnel, the added economic value to certain crops treated with daminozide ranges from 10 percent to 75 percent. However, without information on consumer acceptance—and willingness to pay for treated versus non-treated plants, it is not possible to judge the accuracy of these estimates.

VI. Final Assessment of the Dietary Risks

In the Notice of Voluntary Cancellation (54 FR 47492), EPA stated that it would revise its dietary risk assessment based on the final report of the UDMH cancer studies. As stated earlier in this document, EPA has reviewed the final UDMH cancer data and has refined the UDMH Q_1^*. Using this refined Q_1^* $(0.46\ (mg/kg/day)^{-1})$, and the dietary exposure estimates contained in the PD 2/3, EPA has revised the upper-bound lifetime dietary risk estimate in the PD 2/3 of 4.9×10^{-5} for the general population to 2.6×10^{-5} (Ref. 27). In light of the revised lifetime

dietary risk estimate of 2.6×10^{-5}, and the benefits of the food uses as estimated in 1989, EPA believes that it would have pursued the same course of action as that taken in 1989. Therefore, the revised dietary risk assessment does not change the Agency's regulatory or scientific position on the food-uses of daminozide.

In general, the Agency's risk assessment methodology may overestimate risk. However, it has been designed to avoid underestimating risk and, therefore, allows the Agency to act in a protective manner. The revised dietary risk assessment supports EPA's 1989 position that the dietary risks posed by the food uses of daminozide generally presented an unreasonable risk to human health. The Agency believes that its proposed regulatory action in 1989 on the food uses of daminozide was protective of public health.

VII. Risk/Benefit Analysis and Announcement of Termination of the Daminozide Special Review.

Based on the information summarized and presented in this Notice, EPA has determined that the non-food uses of daminozide, as currently registered, do not pose an unreasonable risk to workers (mixer/loaders and/or applicators). Given the magnitude of the benefits from the non-food uses of daminozide and the negligible risks posed to persons exposed to daminozide while working with it, EPA is announcing its decision to allow the continued uses of daminozide on the non-food use crops as presently registered.

The Agency estimates the lifetime risk to workers from exposure to UDMH to be 10^{-7} and estimates that the potential economic impacts from cancellation of daminozide would be no less than $15 million but could be considerably higher.

The cost-effectiveness (C-E) coefficient is a tool used to compare the estimated loss of benefits from cancellation of daminozide to the estimated reduction in carcinogenic risk from a particular use. It is an estimate of the societal cost per cancer case avoided. EPA has estimated that the C-E of cancellation of the non-food uses of daminozide is approximately $1 billion per theoretical cancer case avoided (Ref. 28). The Agency recognizes that the C-E coefficient has limitations and uses it only as a guide, not a decision tool, in the risk/benefit analysis determination.

VIII. Availability of the Public Docket

Pursuant to 40 CFR 154.15, the Agency has established a public docket (OPP-30000/40D) for the Daminozide Special Review. This public docket includes: (1) This Notice; (2) any other notices pertinent to the Daminozide Special Review; (3) non-Confidential Business Information (CBI) documents and copies of written comments or other materials submitted to the Agency in response to this Notice or any other Notice, and any other documents regarding daminozide submitted at any time during the Special Review process by any person outside the government; (4) a transcript of all public meetings held by the Agency for the purpose of gathering information on daminozide; (5) memoranda describing each meeting held during the Special Review process between Agency personnel and any person outside the government pertaining to daminozide; and (6) a current index of materials in the public docket.

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(22) Bacchus, S. (1991) Memorandum to Tom Moriarty (USEPA). Comments on Uniroyal's Response to PD 2/3 on Daminozide and Response to Questions Raised at the Daminozide Meeting, 9/12/91: Previous Estimates and Recently Submitted Worker Exposure Study for Labeled Uses of Daminozide on Greenhouse Ornamentals.

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(27) Chow, F. (1991) Memorandum to Tom Moriarty (USEPA). Dietary Exposure Analysis for Daminozide/UDMH.

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Dated: September 28, 1992.

Victor J. Kimm,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 92–24511 Filed 10–7–92; 8:45 am]

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Federal Register

Thursday
October 8, 1992

Part IV

Environmental Protection Agency

Amitrole; Preliminary Determination To Terminate Special Review

ENVIRONMENTAL PROTECTION AGENCY

[OPP-30000/38A; FRL 4164-1]

Amitrole; Preliminary Determination To Terminate Special Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed decision to terminate Special Review.

SUMMARY: This Notice sets forth EPA's preliminary determination regarding the continued registration of pesticide products containing amitrole and sets forth the Agency's assessment of the risks and benefits associated with the pesticidal uses of amitrole. On May 15, 1984, the Agency issued a Notice of Special Review of pesticide products containing amitrole based on carcinogenic concerns (49 FR 20546). This Notice proposes to terminate the amitrole Special Review based on the Agency's determination that the benefits of use outweigh the risks.

DATES: Written comments on this Notice must be received on or before November 9, 1992.

ADDRESS: Submit three copies of written comments, bearing the document control number "OPP-30000/38A; FRL 4164-1" by mail to: Public Docket and Freedom of Information Section, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this Notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked CBI may be publicly disclosed by EPA without prior notice to the submitter. All non-CBI written comments and the correspondence index will be available for public inspection and copying in Rm. 1132 at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Philip J. Poli, Review Manager, Special Review Branch, Special Review and Reregistration Division (H7508W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Third floor, Westfield Bldg., 2800 Jefferson Davis Highway, Arlington, VA. (703) 308-8038.

SUPPLEMENTARY INFORMATION:

Electronic Availability: This document is available as an electronic file on the Federal Bulletin Board at 9 a.m. on the date of publication in the **Federal Register**. By modem dial 202-512-1387 or call 202-512-1530 for disks or paper copies. This file is available in Postscript, Wordperfect 5.1 and ASCII.

This document presents the basis for the Agency's proposed decision to terminate the Special Review of amitrole.

I. Introduction

A. Summary

Amitrole is the common name for 3-amino-1,2,4-triazole. It is most commonly sold under the trade names AMIZOL and Amitrol T, and is formulated both as a wettable powder and a liquid concentrate.

Amitrole was first registered as an herbicide under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) in 1956. It is a systemic broad spectrum, post-emergence herbicide that is used to control many annual and perennial broadleaf weeds, grasses and woody species. Amitrole is classified by EPA as a Restricted Use pesticide [Ref. 1]. Section 3(d) of FIFRA specifies that only certified applicators trained for and familiar with pesticide use, or persons under their direct supervision, can use amitrole containing products. The current registered uses of amitrole are limited to non-crop, commercial sites. All amitrole food uses were canceled by the EPA in 1971 because of the carcinogenic potential from dietary exposure.

Currently, amitrole is registered for use on land surrounding commercial, industrial and farm premises, on rights-of-way, public utilities, and nurseries. Under the current use pattern, the principal pathway for human exposure is by the dermal route resulting from mixing, loading and applying the pesticide.

EPA's Special Review was initiated to address the use of amitrole on non-crop sites and by homeowners, and examined the carcinogenic risk to mixers, loaders and applicators. Since the time the Special Review was initiated, the registrant has taken voluntarily actions which have reduced worker exposure to amitrole. These actions include deletion of high exposure application methods such as knapsack sprayers, adoption of a "no-glug" container design for the liquid formulation to reduce splashing while pouring, addition of protective clothing requirements to labels, and packaging of the wettable powder formulation in water soluble packets. Additionally, the registrant has canceled all homeowner products.

EPA has completed its risk/benefit analysis of amitrole and has determined that the benefits from continued use of amitrole outweigh the risks. Accordingly, the Agency is proposing to terminate the Special Review.

B. Legal Background

In order to obtain a registration for a pesticide under FIFRA, an applicant must demonstrate that the pesticide satisfies the statutory standard for registration. The standard requires, among other things, that the pesticide will not cause "unreasonable adverse effects on the environment" [FIFRA section 3(c)(5)]. The term "unreasonable adverse effects on the environment" means "any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide" [FIFRA section 2(bb)]. This standard requires a finding that the benefits of each use of the pesticide outweigh the risks of such use, when the pesticide is used in compliance with the terms and conditions of registration and in accordance with commonly recognized practices.

The burden of proving that a pesticide satisfies the statutory standard is on the proponents of registration and continues as long as the registration remains in effect. Under FIFRA section 6, the Administrator may cancel the registration of a pesticide or require modification of the terms and conditions of a registration if he determines that the pesticide product causes unreasonable adverse effects to man or the environment. EPA created the Special Review process to facilitate the identification of pesticide uses which may not satisfy the statutory standard for registration and to provide a public procedure to gather and evaluate information about the risks and benefits of these uses.

A Special Review may be initiated if a pesticide meets or exceeds the risk criteria set out in the regulations at 40 CFR part 154. EPA announces that a Special Review is initiated by publishing a Position Document (PD) in the **Federal Register**. After a PD is issued, registrants and other interested persons are invited to review the data upon which the review is based and to submit data and information to rebut EPA's conclusions by showing that EPA's initial determination was in error, or by

showing that use of the pesticide is not likely to result in unreasonable adverse effects on human health or the environment. In addition to submitting rebuttal evidence, commenters may submit relevant information to aid in the determination of whether the economic, social and environmental benefits of the use of the pesticide outweigh the risks. After reviewing the comments received and other relevant materials obtained during the Special Review process, EPA makes a decision on the future status of registrations of the pesticide.

The Special Review process may be concluded in various ways depending upon the outcome of EPA's risk/benefit assessment. If EPA concludes that all of its risk concerns have been adequately rebutted, the pesticide registration will be maintained unchanged. If, however, all risk concerns are not rebutted, EPA will proceed to a full risk/benefit assessment. In determining whether the use of a pesticide poses risks which are greater than the benefits, EPA considers possible changes to the terms and conditions of registration which can reduce risks to the level where the benefits outweigh the risks, and it may require that such changes be made in the terms and conditions of the registration. Alternatively, EPA may determine that no changes in the terms and conditions of a registration will adequately assure that use of the pesticide will not cause any unreasonable adverse effects. If EPA makes such a determination, it may seek cancellation, suspension, or change in classification of the pesticide's registration. This determination would be set forth in a Notice of Final Determination issued in accordance with 40 CFR 154.33.

Issuance of this Notice means that the Agency has assessed the potential adverse effects associated with the uses of amitrole and has preliminarily determined that the benefits override the risks.

C. Regulatory Background

The Registration Standard for amitrole was published on March 30, 1984. It required submission of product chemistry, environmental fate, toxicology and ecological effects data.

On May 15, 1984, the EPA issued a notice to initiate a Special Review based on carcinogenic concerns to mixers, loaders and applicators for registrations of products containing amitrole (49 FR 20546). This document, also referred to as Position Document 1 or PD 1, detailed the basis for the Agency's decision to initiate a Special Review. At that time, the Agency determined that all uses, including the homeowner use, would be the subject of the Special Review for amitrole. Subsequently, all products designated for homeowner use were canceled [Ref. 2], and the ensuing Special Review focused on the carcinogenic risk to mixers, loaders and applicators. The Agency had reviewed data concerning the potential adverse effects associated with uses of amitrole which indicated that amitrole induces thyroid and pituitary tumors in the rat, plus liver and thyroid tumors in mice, and had determined that pesticide products containing amitrole met or exceeded the risk criterion in 40 CFR 162.11(a)(3)(ii)(A), (1984 volume). That section required that a Special Review shall be initiated if a pesticide "induces oncogenic effects in experimental mammalian species or in man as a result of oral, inhalation or dermal exposure." That criterion is mirrored by the current provision of 40 CFR 154.7(a)(2), (1991 volume), which sets forth the similar criterion for initiation of a Special Review by EPA.

II. Summary of Toxicological Concerns and Agency Evaluation ofComments

The Special Review of amitrole was initiated in 1984 because of data indicating that amitrole induces thyroid, pituitary and liver tumors in laboratory animals. In addition, the Agency required further information to be submitted regarding amitrole's other potential effects [Ref. 1]. This section summarizes the Agency's review of studies for all effects of concern and includes discussion of new information and public comments that have been received since publication of the PD 1.

A. Carcinogenicity

In the PD 1, the Agency indicated its concern about the carcinogenic effects of amitrole. In making its current determination, EPA reviewed nine long-term carcinogenicity studies conducted with amitrole on rats, mice or hamsters. One of the rat studies is a chronic inhalation study; the rest of the studies (4 rat, 3 mouse and 1 hamster) are oral feeding, gavage or drinking water studies [Refs. 3 through 12]. None of these studies individually satisfied EPA testing guidelines; some had major deficiencies (e.g., target doses grossly exceeded [Ref. 3]; problems with the histological examination and presentation of data [Ref. 4]). The rat inhalation study and one of the rat oral studies were classified as invalid. In addition, one perinatal carcinogenicity study in mice could not be evaluated. The chronic feeding study in hamsters was not addressed by the Agency because the hamster was determined to be the least sensitive species. The rest of the studies are classified as supplementary; that is, the studies are scientifically valid, but do not satisfy all Agency guideline requirements. These five studies are discussed below, and do indicate that amitrole is likely to be a carcinogen, inducing thyroid and pituitary tumors in rats, and thyroid and liver tumors in mice. They are considered part of the weight-of-evidence determination for the carcinogenic potential of amitrole. Following these studies are discussions of other pertinent information which support the carcinogenic potential of amitrole.

1. *Rat studies— a. Keller; Hazleton, 1959.* Amitrole was administered in the diet at 0, 10, 50 or 100 ppm to Charworth Farm rats and was associated with numerical increases, in both sexes at the terminal sacrifice, in the incidence of thyroid adenoma at 50 ppm and 100 ppm and in combined thyroid adenoma/carcinoma at 100 ppm. There were statistically significant positive trends for thyroid adenomas and for combined adenoma/carcinoma in both sexes. There were also statistically significant positive trends in thyroid hyperplasia in both sexes at 68 weeks, which were not seen at 104 weeks.

b. *Johnson; Food and Drug Research, 1981.* Amitrole was administered in the diet in five "pulsed" dose groups (A, 0–0; B, 5–100; C, 1–20; D, 3–60; E, 10–200 ppm) to Fischer 344 rats. In treatment groups B, D and E, statistically significant increases in the incidence of thyroid follicular cell adenoma and combined adenoma/carcinoma were reported in both sexes. There were also statistically significant positive trends for adenoma and carcinoma, both individually and combined, in both sexes. In both sexes, there were both statistically significant increases in the incidence of follicular cell hyperplasia in all treatment groups, and also statistically significant positive trends. Increases in thyroid organ weights were observed for groups B and E, both sexes. Thyroid hormone T3 was elevated throughout the study for all treatment groups compared to controls, while T4 values were variable.

c. *Steinhoff, 1979, 1983.* Amitrole was administered in the diet at 0, 1, 10 or 100 ppm to Wistar rats and was associated with statistically significant increases in the incidence of thyroid tumors at 100 ppm in males and females when compared to the controls, as well as a statistically significant positive trend in both sexes. There was a numerical increase in the incidence of pituitary tumors in both sexes in all treatment groups, which was statistically significant in both sexes at 100 ppm.

with a statistically significant positive trend for females. Percentage accumulations of radioiodine were increased in both sexes at 100 ppm at "the majority of the test times", which was thought to be due to increases in physiologically active thyroid tissue; proportional plasma iodine remained fairly constant throughout the study.

2. *Mouse studies*— a. *Innes, 1969.* Amitrole was administered by stomach tube at 6,667 ppm and by dietary feeding at 2,192 ppm. In this study, amitrole was used as a positive control for screening 120 compounds to C57 mice. Results indicated carcinoma of the thyroid in 64 of 72 treated animals and hepatomas in 67 of 72 animals.

b. *Steinhoff, 1979, 1983.* Amitrole was administered in the diet to NMRI mice at 0, 1, 10 or 100 ppm and was associated with statistically significant positive trends for hepatocellular carcinoma and combined liver carcinoma/adenoma in females. Thyroid weights were increased throughout the study in both sexes at 100 ppm.

3. *Mutagenicity.* Although the published literature shows that amitrole is negative in a majority of mutagenicity assays [Ref. 13], there is some evidence that amitrole may have some genotoxic activity, as well as transformation activity in mammalian tests. Two sister chromatid exchange assays were reported positive; there were mixed results for DNA damage and unscheduled DNA synthesis, and all in vitro cell transformation assays were positive.

In addition, several studies suggest that amitrole has mutagenic activity when assayed with metabolic activation systems other than the usual liver preparations (e.g. "S9" mixes) [Ref. 14]. Also, Daston et. al. [Ref. 15] found that mutations were induced by amitrole in the mouse lymphoma assay supplemented with a prostaglandin H synthase activation system. Further, Krause and Eling [Ref. 16] have shown PHS- and lactoperoxidase-mediated binding of labelled amitrole to protein and nucleic acid (tRNA), as well as protein binding catalyzed by microsomal thyroid peroxidases; this demonstrates that amitrole can be activated to a reactive species.

Therefore, the data suggest that evidence of amitrole's possible genotoxicity may play a role in its carcinogenic potential. However, this is not an established conclusion, and the exact role genotoxicity has for amitrole-induced thyroid tumors is unclear at this time.

4. *Mechanism of tumor formation (Threshold Concept).* Amitrole is a potent antithyroid agent in laboratory animals, causing thyroid tumors in rats and mice. A plausible theory for amitrole-induced thyroid tumor development is supported by the threshold concept, discussed below. While the Agency recognizes that this concept provides a possible mechanism for thyroid tumor evolution, it has not been proven.

Experimental evidence indicates that thyroid tumors in rats can only occur as a result of exceeding a threshold (i.e., tumors appear only when hormone concentrations are altered above or below a specific level, identified as the threshold, for an extended period of time). To fully understand the threshold concept, it is necessary to provide a brief explanation of the physiological relationship between the pituitary gland and thyroid gland. Decreased levels of thyroid hormones disturb the physiological equilibrium which causes the anterior pituitary gland to secrete thyroid stimulating hormone (TSH). In turn, TSH causes thyroid hormone levels to rise back to normal levels. The anterior pituitary then decreases production of TSH which causes a subsequent decrease in the production of thyroid hormone. If there is a disruption of this feedback mechanism resulting in decreased thyroid hormone levels that cannot be counterbalanced by increased TSH production, the result is the continuous but futile stimulation of the thyroid by TSH. This constant stimulation by TSH over an extended period of time changes the morphology of the thyroid gland and, at some critical point, results in tumor formation. This is the proposed mechanism for tumor formation involving a threshold. It is unclear what role the genotoxicity of amitrole may play in this process.

Amitrole may interfere with the synthesis of thyroid hormones by inhibiting iodide peroxidase, which results in positive feedback to the pituitary (described above) for as long as amitrole exposure is sufficient to maintain decreased thyroid levels. It has been argued, therefore, that unless exposure levels of amitrole are high enough to sufficiently inhibit iodide peroxidase for an extended period of time, causing the appropriate hormone levels to exceed a specific concentration, thyroid tumors should not be induced. In other words, doses of amitrole below the threshold would be inadequate to cause this exaggerated positive feedback.

5. *Structure-Activity.* Amitrole is a heterocyclic aromatic amine, with a structure somewhat similar to a few triazoles that have been shown to induce liver tumors in mice. Other heterocyclic aromatic amines, for instance, some bicyclo- and tricyclo-heterocyclic aromatic amines, have been shown to be very potent carcinogens and mutagens. Also, some homocyclic aromatic amines (those with double rings attached by a simple ether-like bridge), show a correlation between anti-thyroid activity (inhibition of thyroid peroxidase) and thyroid carcinogenesis. Because the structure of amitrole is remotely related to those of other tumor-inducing aromatic amines, it has been determined that there is a weak structure activity relationship.

6. *Classification of carcinogenic potential.* Based on the weight-of-evidence provided collectively by the five studies discussed in this document, amitrole is considered to be a probable human carcinogen. Evidence is considered to be sufficient if there is an increased incidence of tumors: (a) In multiple species or strains of test animals; or (b) in multiple experiments, for example, with different dose levels or routes of administration; or (c) to an unusual degree in a single experiment with regard to high incidence, unusual site or type of tumor, or early age of onset. Although it was generally agreed within the Agency that none of the individual studies were good. However, it was evident that malignant and benign tumors were observed in both sexes of multiple strains of the rat (thyroid) [Refs. 4, 5 and 8] and in two strains of mice (liver) [Refs. 7 and 10]. Other data supporting the conclusion of likely carcinogenic potential include the limited evidence of genotoxicity for amitrole, the structure-activity correlations based on the triazoles (mouse liver tumors), and the slight relationship to heterocyclic aromatic amines.

7. *Potency factor (Q_1*).* For the purposes of risk characterization, the low dose extrapolation multi-stage model using the thyroid tumor data in the rat was chosen. None of the mouse liver data were amenable to quantification and, furthermore, the rat seemed to be the more sensitive species as tumors occurred at lower doses. Therefore, the amitrole Q_1^*, which is the geometric mean of estimates computed separately for male and female rats, was determined to be 1.13 $(mg/kg/day)^{-1}$ [Ref. 17].

B. Developmental and Reproductive Effects

Studies on rabbits, rats, and mice were conducted to assess the potential for amitrole to induce developmental effects [Refs. 18, 19, 20 and 21]. In all three species, amitrole is a developmental toxicant at dose levels

that are maternally toxic. The rabbit is the most sensitive species. In a gavage study in rabbits, dose levels of 0, 4, 40 and 400 mg/kg/day were tested. Developmental and maternal toxicity were observed at 40 mg/kg/day and higher. Maternal effects included loss of body weight, reduced gravid uterine weight, increased relative liver weight (400 mg/kg/day) and increased number of abortions and total litter resorptions, fewer viable implants per litter, blood on the paperboard and yellow/brown fluid in the amniotic sacs (40 and 400 mg/kg/day). The No Observed Effect Level (NOEL) for maternal toxicity was 4.0 mg/kg/day. Developmental effects included decreased fetal body weights and cleft palate (400 mg/kg/day) and increased numbers of early and late resorptions, malformed fore- and hindlimbs, dome-shaped head, hydrocephaly, lateral scoliosis, curved nasal bones, displaced thalamus and poorly ossified bones in skull, trunk and extremities (40 and 400 mg/kg/day). The developmental NOEL was 4.0 mg/kg/day.

A dermal developmental study also was conducted in rabbits. Again, in this study, amitrole is a developmental toxicant at levels which are maternally toxic. Rabbits were dosed over 10 percent of the body surface with 1,000, 1,500, or 2,000 mg/kg/day of amitrole during days 7 through 19 of gestation. The NOEL for maternal toxicity was 1,000 mg/kg/day and the Lowest Observed Effect Level (LOEL) was 1,500 mg/kg/day based on decreased body weights on gestation day 20, decreased food consumption from gestation days 10 through 20 and ascites. The NOEL for developmental toxicity was 1,000 mg/kg/day and the LOEL was 1,500 mg/kg/day based on decreased gravid uterine weights, decreased fetal bodyweights, increased number of total resorptions and increased skeletal anomalies including unossified hyoid (skull), unossified pubis, absent and/or unossified talus, and left carotid arising from innominate artery.

A 2-generation rat reproduction study was not required by the Agency because, based on current use patterns of amitrole, no reproductive risk to workers was expected. However, the Agency has received a 2-generation reproduction study (determined to be supplementary) [Ref. 22], in which Sherman rats were fed 0, 25 or 50 mg/kg amitrole in the diet for 55 days and then mated. Decreases in body weights and food consumption, enlarged thyroids and reduced liver and kidney weights were observed in the parents of both treated groups. The number of offspring, mean body weights and survival were reduced in the offspring of both treated groups. No malformations were reported. Because this study does not meet Agency guidelines, a determination on the validity of the noted reproductive effects could not be made.

The Agency has received a range-finding reproduction study [Ref. 23] in which rats were tested at dose levels of 40, 100, 300 and 800 ppm in the diet. There was maternal toxicity at all dose levels (decreased maternal body weight gains from gestation days 0–7 at 100 ppm and above, and goiter and increased thyroid-to-body weight ratios at 40 ppm and above). The mean number of pups was significantly lower at dose levels of 100 ppm and above, and decreases in T4 were seen in F1 males at 40 ppm, and in both sexes at 100 ppm and above. TSH was increased at 100 ppm and at 300 ppm. Increased thyroid weights, hyperplastic goiter and follicular hyperplasia also were observed in the offspring.

C. Public Comments and Agency Responses To The Position Document 1

A number of comments relating to the toxicity of amitrole were received in response to the PD 1. A summary of those comments and the Agency's responses follow.

1. *Comment.* Amitrole is a secondary, not a primary, thyroid and pituitary carcinogen in laboratory animals.

Response. The Agency believes that while the data in the rat are suggestive of a disruption in the thyroid-pituitary status, the data are neither clear and complete nor consistent. Therefore, the Agency treats amitrole as a primary carcinogen for the thyroid and pituitary. The Agency also believes that amitrole is a primary carcinogen for the liver.

2. *Comment.* It is inappropriate to extrapolate thyroid and pituitary carcinogenic effects in laboratory animals to humans.

Response. The Agency takes the position that humans are at least as sensitive as laboratory animals unless data are developed to establish and quantify any differences in sensitivity.

3. *Comment.* Exposure to amitrole must be of sufficient magnitude and duration to elicit thyroid, pituitary, and liver carcinogenic effects.

Response. The Agency believes that exposure to low doses of amitrole can elicit thyroid and pituitary carcinogenic effects. Thyroid tumors were observed in long-term rat studies at doses as low as 60 ppm in the diet. There are some data that indicate that amitrole may induce an increase in liver tumors in mice at low dose levels as well. The Agency agrees that exposure to amitrole must be prolonged to elicit thyroid and pituitary carcinogenic effects. The Agency believes that extended and continuing exposure is necessary to initiate the liver carcinogenic process.

4. *Comment.* Amitrole has no mutagenic potential.

Response. The Agency believes that while a large number of mutagenicity studies are negative (many of them from studies in bacteria), there are a number of studies with positive results (see Hill et al., 1989). In addition, several studies suggest that amitrole has mutagenic activity when assayed with metabolic activation systems other than the usual liver preparations; for example, "S9" mixes. (See Mutagenicity, Unit II. A. 3. of this notice) Overall, the genotoxicity evidence for amitrole from available tests is not entirely negative and there are indications of genotoxic, as well as transformation, activity in mammalian tests.

5. *Comment.* The appropriate model to estimate thyroid and pituitary carcinogenic risk is a non-linear model, not the multi-stage model.

Response. The Agency believes that while the data in the rat were suggestive of a disruption in the thyroid-pituitary status, the data were neither clear and complete nor consistent, and did not support the use of the threshold model. Therefore, for the purpose of risk characterization, a low dose extrapolation multi-stage model has been used for quantification of human risk.

6. *Comment.* The Agency inappropriately used modeling to estimate risk from exposure to amitrole.

Response. The Agency believes that the application of modeling techniques to estimate risk is appropriate for thyroid and pituitary carcinogenic effects. The Agency believes that the data are insufficient to support the use of a NOEL/uncertainty factor methodology for estimation of risk.

III. Occupational and Residential Exposure and Risk and Agency Evaluation of Comments

A. Position Document 1

In the May 1984 Notice of Special Review (PD 1), the Agency concluded that, except for uses associated with homeowner products, the carcinogenic risk associated with all use patterns and application techniques of amitrole may result in unreasonable adverse effects. The Agency's risk analysis was based on exposure estimates obtained from surrogate studies employing other pesticides with uses and application

techniques similar to amitrole, and one exposure study which utilized amitrole.

When conducting the risk assessment, the Agency assumed that all workers were unprotected; that is, they wore only cotton work clothes, short-sleeved shirts but no hat, gloves or respirator. Fifteen percent of the body surface was assumed to be uncovered. Applicator exposure was calculated from surrogate data where amitrole exposure was determined to be a linear function of the pounds of amitrole active ingredient expected to be used vs. the pounds of applied surrogate active ingredient. When no data were available, applicator exposure was calculated as a function of the duration of application and the concentration of the active ingredient in the spray. Mixer/loader exposures were estimated from surrogate data and were assumed to be proportional to the amount of amitrole active ingredient vs. the amount of surrogate active ingredient. Highway tractor (or truck) applicators and forest helicopter applicators were assumed to be tended by mixer/loader personnel. Except for applicators using home-use pressurized aerosols, all other applicators were assumed to be involved in mixing/loading operations. The Agency's assumptions were conservative and may have overestimated actual exposure.

The Agency estimated the exposure for each application technique and each site type on which amitrole was registered. These sites included: rights-of-way, marshes and drainage ditches, ornamentals, and land surrounding commercial, industrial, agricultural, domestic, and recreational premises. The typical exposure was based on average field worker exposure, while minimum and maximum values were based on the highest and lowest exposures observed in the data. Dermal exposure, especially to the hands, constituted virtually all of the total amitrole exposure. Exposure estimates ranged from 1×10^{-1} mg/kg/day for certain industrial uses to 3×10^{-7} mg/kg/day for homeowner uses. The use of protective clothing (coveralls, gloves, hats and boots) was expected to reduce the dermal exposure.

At the time of the PD 1, there were no data available to estimate the dermal penetration of amitrole. Since dermal exposure was the greatest single source of exposure to workers, this was an important parameter in assessing exposure and therefore risk. Because of the lack of data, the Agency calculated the risk to workers using two assumptions. First, EPA assumed that 100 percent of amitrole would be absorbed, a worst case assumption. Risk estimates under this assumption ranged from 10^{-6} to 10^{-5} for homeowners to 10^{-2} to 10^{-1} for utility power wagon applicators, industry power wagon applicators, industry knapsack/hand-carry applicators, railroad tanktrain mixer/loaders and highway tractor/truck mixer/loaders. Second, EPA also assumed 0.1 percent dermal absorption, based on the chemical properties of amitrole. Based on this assumption, the risk estimates ranged from 10^{-9} to 10^{-8} for homeowners to 10^{-4} to 10^{-3} for utility power wagon mixer/loader/applicators, and industry power wagon mixer/loader/applicators.

B. Current Exposure and Risk Estimates

1. *Label, packaging, and use changes.* Rhone-Poulenc, the sole U.S. registrant of amitrole, has voluntarily canceled all homeowner products (55 FR 41763, October 15, 1990), and has voluntarily taken actions which have reduced worker exposure to amitrole. These actions include deleting the high exposure application methods, such as knapsack sprayers, which had previously resulted in the highest risk. Rhone-Poulenc also adopted a "no-glug" container to reduce splashing while pouring, added protective clothing requirements to product labels and canceled all uses except on rights-of-way, public utilities, nurseries, and land surrounding commercial, industrial and farm premises. The current risk assessment for amitrole is for workers mixing, loading and applying amitrole to highway rights-of-way, the use with the greatest exposure and, therefore, risk.

2. *Current exposure estimates and assumptions.* The current assessment is based on worker exposure studies conducted for bromoxynil [Ref. 17], another herbicide. The Agency used the bromoxynil worker exposure study as a surrogate for the liquid formulations of amitrole because: (1) The container design for amitrole was amended so it is similar to that of bromoxynil; (2) the label restrictions for protective clothing and engineering controls for amitrole are comparable in effectiveness to those for bromoxynil; (3) the application equipment used to apply amitrole to rights-of-way is similar to that used for bromoxynil; and (4) the ground boom equipment used for bromoxynil agricultural sites would likely result in similar or greater exposure as compared to equipment used for amitrole on highway rights-of-way.

In general, the exposure assessment assumed that workers wore clean cotton (or cloth) coveralls over long sleeve shirts and long pants in addition to boots or sturdy footwear. For workers handling concentrated product (mixer/loaders) or when repairing and cleaning the equipment used with this product, chemical resistant gloves were also assumed to be used. These protective clothing requirements are on the current labels.

Usage data utilized for this assessment indicate that the typical usage per person on highway rights-of-way is 100 lbs active ingredient (ai) per day and 1,000 lbs ai/year. The typical application rate is assumed to be 2.5 lbs ai/acre and 40 acres are treated per day. A typical worker is assumed to weigh 70 kg.

Based on these assumptions, the total yearly exposure to liquid formulations for a 70 kg worker is 2.2×10^{-2} mg/kg/year. The average daily exposure is 5.9×10^{-5} mg/kg/day. The Agency believes that the exposure from the water soluble packets will be far less than the exposure incurred by mixer/loaders from the liquid formulation. Exposures of applicators to mixtures from either liquid or wettable powder formulations are assumed to be the same. Therefore, the exposure estimate of 5.9×10^{-5} mg/kg/day for the liquid is judged to be the highest exposure estimate for all amitrole formulations.

3. *Current risk estimates*— a. *Carcinogenic risk.* The availability of the bromoxynil exposure studies and the dermal penetration study has allowed EPA to refine its risk estimates. In the PD 1, in the absence of a valid study to demonstrate otherwise, dermal penetration was assumed to be 100 percent. A dermal penetration study on amitrole was subsequently received and reviewed, and was used in the current risk assessment. Dermal penetration in this study was shown to be 0.1 percent [Ref. 24]. Additionally, EPA estimates that the unit cancer risk (Q_1^*) is 1.13 $(mg/kg/day)^{-1}$.

When calculating the Lifetime Average Daily Dose (LADD), EPA assumed a worker life span of 70 years with an amitrole exposure period of over 35 years. Using these values, and an average daily exposure estimate of 5.9×10^{-5} mg/kg/day, the LADD was determined to be 2.9×10^{-5} mg/kg/day.

The excess lifetime cancer risk to workers involved in mixing, loading, and application of the liquid formulations of amitrole for highway rights-of-way uses is estimated to be 3.3×10^{-6} [Ref. 17].

b. *Other risks.* Three developmental studies, two oral and one dermal, are available for amitrole. Because the primary route of exposure is dermal, the most appropriate study to assess potential developmental effects to workers exposed to amitrole is the

dermal study. Using the NOEL of 1,000 mg/kg/day from this study to calculate margins of exposure, EPA determined that workers would not be at risk for developmental effects from exposure to amitrole.

C. Public Comments and Agency Responses to the Position Document 1

Comments relating to exposure to amitrole were received in response to the PD 1. A summary of those comments and the Agency's responses follow.

1. *Comment.* The worker exposure estimates used for the Registration Standard and the Position Document 1 in 1984 are unrealistic and represent a worst case exposure scenario.

Response. The Agency acknowledges that, in the absence of more specific available data, its 1984 worker exposure estimates were conservative and represented a worst case scenario. Both the Registration Standard and the PD 1 specifically state that calculations may overestimate exposure. Since 1984, the Agency has received better data that allow a more accurate estimate of exposure and risk. The Agency originally assumed 100 percent dermal penetration; actual data generated in 1985 by the registrant showed the dermal penetration to be 0.1 percent. Additionally, exposure data from a bromoxynil study were used as a surrogate for amitrole, which allowed the Agency to more accurately estimate exposure to mixers/loaders/applicators.

2. *Comment.* The amitrole exposure study [Ref. 25] demonstrated that hands received only 6 percent of the total dermal exposure. Lower legs, chest and thighs received 94 percent of the total exposure. Respiratory exposure was insignificant (less than 0.1 percent of the total exposure).

Response. The Agency disagrees with this and estimates hand exposure at approximately 96 percent. The estimate in Baugher (1982) was based on an application time of 2.36 hours with applicators using latex gloves. The actual application time was 7 hours with applicators wearing cotton gloves that absorb and retain moisture, with latex gloves worn underneath. The Agency noted that the exposure estimate was based on the residue on the outside of the latex gloves. The forearms, chest, and inhalation account for the balance of exposure. The Agency concurs that inhalation represents less than 0.1 percent of the total exposure.

3. *Comment.* Normal exposure will not alter thyroid function of workers.

Response. The Agency concurs that typical mixing/loading/application practices of certified applicators coupled with protective clothing and the exposure reduction measures will reduce exposure to levels which will not likely alter worker thyroid function.

IV. Summary of Benefits and Evaluation of Alternatives

A. Importance of Amitrole

Benefits of amitrole include its relatively low cost, broad spectrum control of newly emerged or established broadleafs and its miscibility with other low cost, broad spectrum residual soil active chemicals. Amitrole controls newly emerged or established broadleafs because it is a contact herbicide that kills growing vegetation. Amitrole is mixed with residual herbicides because its short 2–4 week half-life precludes effectiveness against later-germinating weeds. Amitrole provides nonselective weed control when used alone or in combination with longer lasting herbicides on highway berms, guard rails, around sign posts, railroad beds, and similar areas. Highway rights-of-way sometimes require total vegetation control which is generally achieved through use of nonselective herbicides such as amitrole in tank mix combination with a soil residual herbicide.

B. Usage of Amitrole

Amitrole is imported, not produced in the United States. Rhone-Poulenc is the only U.S. importer of amitrole. Domestic usage has been falling throughout the 1980's and 1990's, partially due to the 1984 classification of amitrole as a Restricted Use pesticide. The decline in use of amitrole may also be due to the recent registration of other herbicides with a broader spectrum of weed control. The EPA estimated that annual usage of amitrole in 1984 was between 500,000 and 800,000 pounds but, by 1989, had decreased to between 50,000 and 100,000 pounds of active ingredient. Total annual usage of amitrole declined even further in 1990 to between 40,000 and 60,000 pounds active ingredient. It is estimated that 80 to 90 percent of amitrole use is for highway rights-of-way. The remaining usage is divided among many minor uses which include landscape management, industrial areas and recreational areas. In the late 1970's, amitrole was used widely on railroad, highway and utility rights-of-way, but currently, its major use is along highways [Ref. 26].

According to the registrant, voluntary cancellation in 1991 of its California registration was due to its estimates that the projected sales volume of amitrole did not justify expenditures needed to comply with California data requirements [Ref. 27]. The registrant estimated at the time of cancellation that 90 percent of the pesticide's market share existed in that state. Concurrently, Rhone-Poulenc requested from the Agency, and was granted, a 2–year existing stocks provision to allow products currently in channels of trade to be distributed and sold in California until May 1993. It is expected that the voluntary cancellation in California will accelerate the current declining trend in usage of amitrole.

C. Alternatives Assessment

Amitrole rights-of-way alternatives are divided into two classes: chemical and mechanical control.

1. *Chemical control.* The major alternatives to amitrole are glyphosate, sulfometuron-methyl, diuron, imazapyr, and hexazinone [Ref. 28]. EPA has classified glyphosate as an E carcinogen; that is, evidence indicates that glyphosate is not carcinogenic in humans. Sulfometuron-methyl has not been assigned a carcinogenic classification, but may pose developmental risks. Many of the alternatives to amitrole have outstanding data requirements, thus a satisfactory comparison of the risks for all of the alternatives has not be completed by the Agency. However, glyphosate, at present, appears to be less toxic to humans than amitrole or its alternatives.

Alternatives to amitrole are generally more expensive, and the loss of amitrole from the market could result in increased cost of weed control. Amitrole alternatives provide equivalent, or in some cases, better control of certain weeds with the exception of poison ivy control, for which amitrole is the most efficacious herbicide. If the most likely alternatives, glyphosate and sulfometuron-methyl, were substituted for amitrole, there would be a chemical cost increase ranging from $12.02 to $40.34 per acre treated [Ref 27].

An estimated 30,000 to 50,000 acres of rights-of-way in the United States are currently treated with amitrole. Total chemical cost of maintaining rights-of-way in the United States is estimated to be $224 million per year [Ref. 29]. If glyphosate or sulfometuron-methyl were substituted for amitrole, the aggregated chemical cost increase may range from $600,000 for glyphosate to a chemical cost increase of $2 million for sulfometuron-methyl. Thus, although the other chemical alternatives offer similar control (except for poison ivy), the cost per acre is significantly higher.

2. *Mechanical control.* Controlling brush on highway rights-of-way by manual or mechanical cutting and

controlled burning are high cost alternatives, especially at sites along guardrails and steep slopes, the precise areas of herbicide use.

V. Risk/Benefit Analysis

A. Summary of Risk

EPA has evaluated the risk posed by amitrole to workers mixing, loading and applying the pesticide to highway rights-of-way. Although amitrole is registered for several additional sites, this use pattern is the one that poses the greatest exposure, and therefore risk. EPA has estimated the excess lifetime cancer risk from this exposure to amitrole to be 3.3 x 10^{-5}.

B. Summary of Benefits

Amitrole is a relatively inexpensive and efficacious broad-spectrum herbicide. If amitrole were unavailable, growers would have to use more expensive alternatives (e.g. glyphosate, sulfometuron-methyl) as substitutes, with costs increasing from $600,000 to $2 million/year. Also, many of these alternatives may not provide as effective control of certain weeds as amitrole.

C. Cost-Effectiveness

A cost-effectiveness analysis was developed by the Agency comparing amitrole and its two main alternatives, glyphosate and sulfometuron-methyl [Ref. 30]. The cost-effectiveness analysis reflected two scenarios that took under consideration three possible occupational exposure levels. The first scenario gave a point estimate for 250 applicators (an estimate provided by the registrant as the total annual number of workers exposed, before cancellation in California) and the second scenario utilized 100 applicators (an EPA estimate of the total number of exposed workers, before cancellation in California). The analysis also considered three scenarios for length of exposure: 1 year, 5 years and 35 years. Typically, 1 year of exposure represents college students who are exposed to amitrole only during summer work programs. Five years represents the applicator who finds different employment after several years. Thirty-five years depicts the applicator who is employed in the same profession throughout a lifetime. The exposure figure of 35 years was used for calculating the present risk assessment. This resulted in an estimated risk of 3.3 x 10^{-5}. However, the Agency believes that its assumption that worker exposure occurs for 35 years is conservative and tends to overestimate typical exposure. A more likely length of exposure for a typical worker is considered to be 5 years; the risk estimate for amitrole based on 5 years of exposure is calculated to be 5 x 10^{-6}.

For all scenarios, the upper end of the treated acreage was used in defining the low and high cost per cancer case avoided, if amitrole was canceled and replaced by one of the two principal alternatives. The cost-effectiveness estimate under the scenario of 250 applicators for a 35 year exposure period would range from $73 million to $244 million per cancer case avoided. The risk resulting from 5 years of exposure, the more likely scenario, would increase these costs associated with avoiding an extra cancer case.

D. Conclusions

Based on its risk and benefits assessment, the Agency has concluded that the benefits provided from the use of amitrole outweigh the risks. The cost-effectiveness analysis supports this conclusion by demonstrating the extremely high costs of avoiding a cancer case that would be incurred with cancellation of amitrole.

VI. Agency's Decision Regarding Special Review

Because EPA has concluded that the risks of amitrole are outweighed by the benefits of continued use, EPA proposes that the Special Review based on potential carcinogenic risk of amitrole to workers be concluded. Use of bromoxynil data as a surrogate for amitrole data and the data on dermal penetration have enabled the Agency to refine the amitrole risk assessment to be more realistic than the worst-case assessment conducted for the PD 1. The label modifications and risk reduction measures taken by the registrant, Rhone-Poulenc, have significantly reduced worker exposure to amitrole. Consequently, there is a corresponding reduction in the risks posed by the remaining uses of amitrole. Even given the differences in risk between amitrole and its most likely alternatives, EPA believes that the 3.3 x 10^{-5} risk associated with 35 years of exposure to amitrole is outweighed by the benefits of use. The Agency believes that amitrole's remaining uses pose no significant threat to workers or the general public, and that its significantly lower costs and higher efficacy rates as compared to its alternatives merit retention of the remaining uses. However, because of the positive carcinogenicity studies, the Agency will continue to require that amitrole remain a Restricted Use pesticide, that the cancer warning statement remain in place, that the current application method remain limited to boom sprayers and that present protective clothing requirements remain on labelling.

VII. Public Comment Opportunity

During the 30–day comment period, specific comments are solicited on the preliminary determination set forth in this Notice. The Agency will review and consider any comments received during the official comment period before issuing the final determination to conclude the Special Review of amitrole. Interested persons are invited to submit written comments on this proposal to conclude the Special Review of pesticide products which contain amitrole. All comments and information should be submitted in triplicate by [Insert date 30 days after date of publication in the **Federal Register**] to the address given in this Notice under the ADDRESS section. The comments and information must bear the document control number, "OPP–30000/38A; FRL 4164–1." All written comments filed pursuant to this notice, except "CBI", will be available for public inspection in Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. 22202, from 9 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

VIII. References

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(17) Schlosser, A. Memorandum to Philip Poli (USEPA). Assessment of Risk to Workers from Exposure to Amitrole Used on Highway Rights-Of-Way. April 24, 1991.

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(30) Griffin, Karen. Memorandum to Philip Poli (USEPA). Cost Effectiveness/Benefit Analysis for Amitrole. February 6, 1992.

All but the published references concerning this Preliminary Determination on amitrole are available for inspection from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in the Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, Room 1128, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Dated: September 30, 1992.

Victor J. Kimm,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

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federal register

Thursday
October 8, 1992

Part V

Environmental Protection Agency

40 CFR Part 721

Significant New Uses of Certain Chemical Substances; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPPTS-50598; FRL-3934-7]

RIN 2070-AB27

Significant New Uses of Certain Chemical Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is promulgating significant new use rules (SNURs) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for 24 chemical substances which were the subject of premanufacture notices (PMNs) submitted to EPA. Today's action requires certain persons who intend to manufacture, import, or process these substances for a significant new use to notify EPA at least 90 days before commencing the manufacturing or processing of the substance for a use designated by this SNUR as a significant new use. The required notice will provide EPA with the opportunity to evaluate the intended use, and if necessary, to prohibit or limit that activity before it occurs. EPA is promulgating this SNUR using direct final procedures.

EFFECTIVE DATE: The effective date of this rule is December 7, 1992. This rule shall be promulgated for purposes of judicial review at 1 p.m. Eastern Standard Time on October 22, 1992. If EPA receives notice before November 9, 1992 that someone wishes to submit adverse or critical comments on EPA's action in establishing a SNUR for one or more of the chemical substances subject to this rule, EPA will withdraw the SNUR for the substance for which the notice of intent to comment is received and will issue a proposed SNUR providing a 30-day period for public comment.

ADDRESSES: Each comment or notice of intent to submit adverse or critical comment must bear the docket control number OPPTS-50598 and the name(s) of the chemical substance(s) subject to the comment. Since some comments may contain confidential business information (CBI), all comments should be sent in triplicate (with additional sanitized copies if confidential business information is involved) to: TSCA Document Receipt Office (TS-790), Office of Pollution Prevention and Toxics, Environmental Protection Agency, rm. E-105, 401 M St., SW., Washington, DC 20460. Nonconfidential versions of comments on this rule will be placed in the rulemaking record and will be available for public inspection. Unit IX. of this preamble contains additional information on submitting comments containing CBI.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (TS-799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, rm. E-543-B, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION: This SNUR will require persons to notify EPA at least 90 days before commencing manufacturing or processing of a substance for any activity designated by this SNUR as a significant new use. The supporting rationale and background to this rule are more fully set out in the preamble to EPA's first direct final SNURs at 55 FR 17376 on April 24, 1990. Consult that preamble for further information on the objectives, rationale, and procedures for the rules and on the basis for significant new use designations including provisions for developing test data.

I. Authority

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a "significant new use." EPA must make this determination by rule after considering all relevant factors, including those listed in section 5(a)(2). Once EPA determines that a use of a chemical substance is a significant new use, section 5(a)(1)(B) of TSCA requires persons to submit a notice to EPA at least 90 days before they manufacture, import, or process the substance for that use. The mechanism for reporting under this requirement is established under 40 CFR 721.10.

II. Applicability of General Provisions

General provisions for SNURs appear under subpart A of 40 CFR part 721. These provisions describe persons subject to the rule, recordkeeping requirements, exemptions to reporting requirements, and applicability of the rule to uses occurring before the effective date of the final rule. Rules on user fees appear at 40 CFR part 700. Persons subject to this SNUR must comply with the same notice requirements and EPA regulatory procedures as submitters of PMNs under section 5(a)(1)(A) of TSCA. In particular, these requirements include the information submission requirements of section 5(b) and 5(d)(1), the exemptions authorized by section 5(h)(1), (2), (3), and (5), and the regulations at 40 CFR part 720. Once EPA receives a SNUR notice, EPA may take regulatory action under section 5(e), 5(f), 6, or 7 to control the activities for which it has received the SNUR notice. If EPA does not take action, EPA is required under section 5(g) to explain in the **Federal Register** its reasons for not taking action.

Persons who intend to export a substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b). The regulations that interpret section 12(b) appear at 40 CFR part 707. Persons who intend to import a chemical substance identified in a final SNUR are subject to the TSCA section 13 import certification requirements, which are codified at 19 CFR 12.118 through 12.127 and 127.28. Such persons must certify that they are in compliance with the SNUR requirements. The EPA policy in support of the import certification appears at 40 CFR part 707.

III. Substances Subject to This Rule

EPA is establishing significant new use and recordkeeping requirements for the following chemical substances under 40 CFR part 721 subpart E. In this unit, EPA provides a brief description for each substance, including its PMN number, chemical name (generic name if the specific name is claimed as CBI), CAS number (if assigned), basis for the action taken by EPA (including the statutory citation and specific finding), toxicity concern, and the CFR citation assigned in the regulatory text section of this rule. The specificuses which are designated as significant new uses are cited in the regulatory text section of the rule by reference to 40 CFR part 721 subpart B where the significant new uses are described in detail.

Data on potential exposures or releases of the substances, testing other than that specified for the substances, or studies on analogous substances, which may demonstrate that the significant new uses being reported do not present an unreasonable risk, may be included with significant new use notification. In addition, this unit describes tests that are recommended by EPA to provide sufficient information to evaluate the substance. Descriptions of recommended tests are provided for informational purposes.

PMN Numbers P-88-2100 and P-88-2169

Chemical name: (generic) Acrylamide, polymers with tetraalkyl ammonium salt and polyalkyl, amino alkyl methacrylamide salt.

CAS numbers: Not available.

Basis for action: The PMN substances will be used as water clarifiers. Test

data on structurally similar polycationic compounds indicate that the PMN substances may cause toxicity to aquatic organisms. Based on this data EPA expects toxicity to aquatic organisms to occur at a concentration of 2 ppb of the PMN substances in surface waters. EPA determined that use of the substances as water clarifiers as described in the PMNs did not present an unreasonable risk because the substances would not be released to surface waters. EPA has determined that potential uses, such as water retention aids, other types of clarifiers or flocculents could result in releases to surface waters where the concentration of the PMN substances exceeds 2 ppb. Based on this information, the PMN substances meet the concern criteria at 721.170(b)(4)(ii).

Recommended testing: The Agency has determined that the results of the following acute aquatic toxicity testing would help characterize possible environmental effects of the substances: Algal (40 CFR 797.1050); daphnid (40 CFR 797.1300); fish (40 CFR 797.1400); and fish toxicity mitigated by dissolved organic carbon (40 CFR 795.115). These tests should be conducted with flow-through conditions and measured concentrations.

CFR citation: 40 CFR 721.6540.

PMN Number P-90-2

Chemical name: (generic) Disubstituted phenoxazine, chlorometalate salt.

CAS number: Not available.

Basis for action: The use of the PMN substance as described in the PMN was claimed confidential. Test data on substances similar in structure to the PMN substance and an analogous chemical substance indicate that the PMN substance may cause mutagenicity and oncogenicity. EPA determined that use of the substance as described in the PMN did not present an unreasonable risk to human health. EPA has determined that potential other uses such as a dye could result in risk to human health. Based on this information the PMN substance meets the concern criteria at 721.170(b)(1)(i)(D).

Recommended testing: The Agency has determined that the results of a 2-year rodent bioassay (40 CFR 798.3300) would help characterize possible human health effects of the PMN substance.

CFR citation: 40 CFR 721.4720.

PMN Numbers P-90-1984 and P-90-1985

Chemical name: (generic) Fatty acid polyamine condensate, phosphoric acid ester salt.

CAS numbers: Not available.

Basis for action: The PMN substances will be used as steel corrosion inhibitors. Test data on structurally similar ditallowimidazoline esters indicate that the PMN substances may cause toxicity to aquatic organisms. Based on this data EPA expects toxicity to aquatic organisms to occur at a concentration of 1 ppb of the PMN substances in surface waters. EPA determined that use of the substances, as described in the PMN, did not present an unreasonable risk because the substances would not be released to surface waters. EPA has determined that potential use as a fabric softener could result in releases to surface waters where the concentration of the PMN substances could be greater than 1 ppb. Based on this information the PMN substances meet the concern criteria at § 721.170 (b)(4)(ii).

Recommended testing: The Agency has determined that the results of the following acute aquatic toxicity testing would help characterize possible environmental effects of the substance: Algal (40 CFR 797.1050); daphnid (40 CFR 797.1300); and fish (40 CFR 797.1400). These tests should be conducted with flow-through conditions and measured concentrations.

CFR citation: 40 CFR 721.6200.

PMN Number P-91-87

Chemical name: (generic) Fatty amide.

CAS number: Not available.

Basis for action: The PMN substance will be used as an asphalt additive. Based on calculations of the physical and chemical properties of the substance, the quantitative structure activity relationship (QSAR) of the PMN substance indicates that the PMN substance may cause toxicity to aquatic organisms. Based on these data EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 1 ppb of the PMN substance in surface waters. EPA determined that use of the substance as described in the PMN did not present an unreasonable risk because the substance would not be released to water. EPA has determined that other uses of the substance may result in releases to surface waters greater than 1 ppb. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(iii).

Recommended testing: EPA has determined that an acute algal assay (40 CFR 797.1050), an acute daphnid assay (40 CFR 797.1300), and an acute fish assay (40 CFR 797.1400) will characterize environmental effects.

CFR citation: 40 CFR 721.3720.

PMN Number P-91-101

Chemical name: 2-Imino-1,3-thiazin-4-one-5,6-dihydromonohydrochloride.

CAS number: Not available.

Basis for action: Test data on structurally similar chemical substances indicate that the PMN substance may cause toxicity to aquatic organisms. Based on this data EPA expects toxicity to aquatic organisms to occur at a concentration of 30 ppb of the PMN substance in surface waters. The PMN submitter intends to import the PMN substance and therefore no releases from domestic manufacture will occur. However, EPA has determined that domestic manufacture could result in releases to surface waters where the concentration of the PMN substance would be greater than 30 ppb. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii). In addition, based on test data on structurally similar chemical substances, P-91-101 may be developmentally toxic to humans. EPA has determined that import, processing, and use of the PMN substance as a liquid for the use as described in the PMN does not pose a significant risk to workers. However, EPA predicts inhalation exposures to the PMN substance as a solid or a powder form may cause significant risk to workers. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(3)(ii).

Recommended testing: The Agency has determined that the results of the following acute aquatic toxicity testing would help characterize possible environmental effects of the substance: Algal (40 CFR 797.1050); daphnid (40 CFR 797.1300); and fish (40 CFR 797.1400). The daphnid and fish tests should be conducted with flow-through conditions and measured concentrations. The algal study should be conducted with static conditions and measured concentrations. In addition, the Agency has determined that the results of a two-species developmental toxicity test (40 CFR 798.4900) would help characterize possible human health effects of the substance.

CFR citation: 40 CFR 721.4480.

PMN Number P-91-102

Chemical name: (generic) Amidinodithiopropionic acid hydrochloride.

CAS number: Not available.

Basis for action: Test data on structurally similar chemical substances indicate that the PMN substance may cause toxicity to aquatic organisms. Based on these data EPA expects

toxicity to aquatic organisms to occur at a concentration of 30 ppb of the PMN substance in surface waters. The PMN submitter intends to import the PMN substance and therefore no releases from domestic manufacture will occur. However, EPA has determined that domestic manufacture could result in releases to surface waters where the concentration of the PMN substance would be greater than 30 ppb. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: The Agency has determined that the results of the following acute aquatic toxicity testing would help characterize possible environmental effects of the substance: Algal (40 CFR 797.1050); daphnid (40 CFR 797.1300); and fish (40 CFR 797.1400). The daphnid and fish tests should be conducted with flow-through conditions and measured concentrations. The algal study should be conducted with static condiditons and measured concentrations.
CFR citation: 40 CFR 721.4460.

PMN Number P-91-118

Chemical name: (generic) Oligomeric silicic acid ester compound with an hydroxylalkylamine.
CAS number: Not available.
Basis for action: The PMN substance will be used as a binder for paints. Test data on structurally similar alkoxysilanes indicate that the PMN substance may cause lung toxicity. Based on these data EPA expects toxicity to exposed workers to occur if they are exposed by inhalation. EPA determined that use of the substance as a binder for paints as described in the PMN did not present an unreasonable risk because the substance would be processed and used in enclosed processes eliminating potential inhalation exposures. EPA has determined that other potential uses may result in inhalation exposures from nonenclosed processes. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(3)(ii).
Recommended testing: The Agency has determined that the results of a 90-day subchronic inhalation study in rats (40 CFR 798.2250) would characterize potential health effects of the substance.
CFR citation: 40 CFR 721.3100.

PMN Number P-91-288

Chemical name: (generic) Alkoxylated dialkyldiethylenetriamine, alkyl sulfate salt.
CAS number: Not available.
Basis for action: The PMN substance will be used as a cellulose softener. Test data on structurally similar substances indicate that the PMN substance may cause toxicity to aquatic organisms. Based on these data EPA is concerned that toxicity to aquatic organisms may occur at a concentrations as low as 5 ppb of the PMN substance in surface waters. EPA determined that use of the substance as described in the PMN did not present an unreasonable risk because the substance would not be released to water during manufacturing. EPA has determined that other manufacturing processes may result in releases to surface waters greater than 5 ppb. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that an acute algal assay (40 CFR 797.1050), an acute daphnid assay (40 CFR 797.1300), and an acute fish assay (40 CFR 797.1400) conducted under static nominal conditions will characterize environmental effects.
CFR citation: 40 CFR 721.2420.

PMN Number P-91-328

Chemical name: (generic) Disubstituted phenylazo trisubstituted naphthalene.
CAS number: Not available.
Basis for action: The PMN substance was submitted for use as a chemical intermediate. Absorption of the PMN substance is not expected through the skin, expected to be poor through the GI tract, but is expected through the lungs. Test data on a structurally similar substance indicates that an azo reduced naphthalene product of the PMN substance may cause carcinogenicity and mutagenicity. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(1)(i)(D). This action is being taken because of human health concerns regarding toxicity from exposure to the PMN substance via inhalation. Although EPA does not expect inhalation exposure to manufacturing or processing workers or other targeted populations during the use identified in the PMN submission, if the use or physical form of the PMN substance were to change the inhalation exposure to workers could increase significantly. Therefore, the SNUR will require submission of a notice to EPA at least 90 days before the PMN substance may be used other than as an intermediate, or in a powder form, or in a way that generates a dust.
Recommended testing: The Agency has determined that the results of an in vitro rat hepatocyte primary culture/DNA repair test (unscheduled DNA synthesis UDS assay) on the PMN substance and naphthalene containing azo reduction product, with β-naphthylamine as a concurrent positive control, may help address the health concerns.
CFR citation: 40 CFR 721.5200.

PMN Number P-91-442

Chemical name: (generic) Ethylene oxide adduct of fatty acid ester with pentaerythritol.
CAS number: Not available.
Basis for action: The PMN substance will be used as an intermediate for the production of a disperse dye carrier for finishing polyester fibers. Test data on structurally similar nonionic surfactants indicate that the PMN substance may cause toxicity to aquatic organisms. Based on these data EPA expects toxicity to aquatic organisms to occur at a concentration of 10 ppb of the PMN substance in surface waters. EPA determined that use of the substance as an intermediate for the production of a disperse dye carrier for finishing polyester fibers did not present an unreasonable risk because the substance would not be released to surface waters. EPA has determined that other potential uses, as well as potential domestic manufacture, could result in releases to surface waters where the concentration of the PMN substance could be greater than 10 ppb. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: The Agency has determined that the results of the following aquatic toxicity tests would help characterize possible environmental effects of the substance: Algal (40 CFR 797.1050); daphnid (40 CFR 797.1300); and fish (40 CFR 797.1400) acute tests. These tests should be conducted with flow-through conditions and measured concentrations.
CFR citation: 40 CFR 721.3680.

PMN Number P-91-487

Chemical name: (generic) Substituted phenylimino carbamate derivative.
CAS number: Not available.
Basis for action: The PMN substance will be used as a coloring agent. Test data on structurally similar substances indicate that the PMN substance may cause toxicity to aquatic organisms. Based on these data EPA is concerned that toxicity to aquatic organisms may occur at a concentrations as low as 7 ppb of the PMN substance in surface waters. EPA determined that use of the substance as described in the PMN did not present an unreasonable risk because the substance is imported and would not be released to water during manufacturing. EPA has determined that if the substance is manufactured in the United States releases to surface waters may result. Based on this information

the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that an acute algal assay (40 CFR 797.1050), an acute daphnid assay (40 CFR 797.1300), and an acute fish assay (40 CFR 797.1400) conducted under static nominal conditions will characterize environmental effects.
CFR citation: 40 CFR 721.2025.

PMN Number P-91-490

Chemical name: (generic) Substituted ethanolamine.
CAS number: Not available.
Basis for action: The PMN substance will be used as a chemical intermediate. Test data on structurally similar anionic polymers indicate that the PMN substance may cause toxicity to aquatic organisms. Based on these data EPA is concerned that toxicity to aquatic organisms may occur at concentrations as low as 1 ppb of the PMN substance in surface waters. EPA determined that use of the substance as a chemical intermediate as described in the PMN did not present an unreasonable risk because releases of the substance would not result in surface water concentrations exceeding the environmental concern level. Test data on a structurally similar chemical also indicate that the PMN substance may cause liver toxicity and cataracts. Based on these data EPA expects liver toxicity and cataract formation in workers exposed by inhalation. EPA determined that use of the substance in a liquid form as described in the PMN did not present an unreasonable risk because workers would not be exposed by inhalation. EPA has determined that other potential uses may result in releases to surface waters where the concentration of the PMN substance could be greater than 1 ppb or where workers could be exposed by inhalation. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii) and (b)(3)(ii).
Recommended testing: EPA has determined that a 21-day daphnid chronic test (40 CFR 797.1330) and a 28-day fish early life stage test (40 CFR 797.1600) would help characterize possible environmental effects of the substance. EPA has also determined that a 90-day subchronic oral study in rats (40 CFR 797.2650) would help characterize possible health effects of the substance.
CFR citation: 40 CFR 721.3360.

PMN Number P-91-521

Chemical name: (generic) Acrylic acid, polymer with substituted ethene.
CAS number: Not available.
Basis for action: The PMN substance will be used as a surface finishing agent. Test data on structurally similar anionic polymers indicate that the PMN substance may cause toxicity to aquatic organisms. Based on these data EPA expects toxicity to aquatic organisms to occur at a concentration of 200 ppb of the PMN substance in surface waters. EPA determined that use of the substance as a surface finishing agent as described in the PMN did not present an unreasonable risk because releases of the substance would not result in surface water concentrations exceeding the environmental concern level. EPA has determined that other potential uses may result in releases to surface waters where the concentration of the PMN substance could be greater than 200 ppb. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: The Agency has determined that the results of the following toxicity testing would help characterize possible environmental effects of the substance: Acute algal (40 CFR 797.1050) and acute algal in hard medium where the PMN substance contains equivalent calcium.
CFR citation: 40 CFR 721.6560.

PMN Number P-91-584

Chemical name: (generic) Aryl sulfonate of a fatty acid mixture, polyamine condensate.
CAS number: Not available.
Basis for action: The PMN substance will be used as a corrosion inhibitor. Test data on structurally similar substances indicate that the PMN substance may cause toxicity to aquatic organisms. Based on these data EPA is concerned that toxicity to aquatic organisms may occur at concentrations as low as 1 ppb of the PMN substance in surface waters. EPA determined that use of the substance as a corrosion inhibitor as described in the PMN did not present an unreasonable risk because the substance would not be released to water. EPA has determined that other potential uses may result in releases to surface waters greater than 1 ppb. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that an acute algal assay (40 CFR 797.1050), an acute daphnid assay (40 CFR 797.1300), and an acute fish assay (40 CFR 797.1400) conducted under static nominal conditions will characterize environmental effects.
CFR citation: 40 CFR 721.6220.

PMN Number P-91-710

Chemical name: (generic) Alkyl substituted diaromatic hydrocarbons.
CAS number: Not available.
Basis for action: The PMN substances will be used as industrial chemicals. Based on calculations of the physical and chemical properties, the QSAR of the PMN substances indicate that they may cause toxicity to aquatic organisms. Based on these data, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 1 ppb of the PMN substances in surface waters. EPA determined that use of the substances as described in the PMN did not present an unreasonable risk because the substances would not be released to water. EPA has determined that other uses of the substances may result in releases to surface waters greater than 1 ppb. Based on this information the PMN substances meets the concern criteria at § 721.170(b)(4)(iii).
Recommended testing: EPA has determined that the results of a chronic 60-day early life stage toxicity test in rainbow trout (40 CFR 797.1600), a 21-day chronic daphnid toxicity test (40 CFR 797.1330), and a 96-hr bioassay in algae (40 CFR 797.1050) would help characterize possible environmental effects of the substance.
CFR citation: 40 CFR 721.840.

PMN Number P-91-838

Chemical name: (generic) Salt of cyclodiamine and mineral acid.
CAS number: Not available.
Basis for action: The PMN substance will be used as a hardener for epoxide resins. Based on analogy of the PMN substance to aliphatic amines, the PMN substance may cause toxicity to aquatic organisms. Based on these data EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 90 ppb of the PMN substance in surface waters. EPA determined that use of the substance as described in the PMN did not present an unreasonable risk because the substance would not be released to water during manufacturing because the substance would not be manufactured in the United States. EPA has determined that releases of the substance to surface water greater than 90 ppb may occur if the substance is manufactured in the United States. Based on this information the PMN substance meets the concern criteria at § 721.170 (b)(4)(ii).
Recommended testing: EPA has determined that an acute algal assay (40 CFR 797.1050), an acute daphnid assay (40 CFR 797.1300), and an acute fish

assay (40 CFR 797.1400) will characterize environmental effects.
CFR citation: 40 CFR 721.2175.

PMN Number P-91-934

Chemical name: (generic) 2,2'-[(1-Methylethylidene)bis[4,1-phenyloxy[1-(butoxymethyl)-(2,1-ethanediyl]oxymethylene]]bisoxirane, reaction product with a diamine.
CAS number: Not available.
Basis for action: The PMN substance will be used as a hardener for various epoxy systems. Based on analogy of the PMN substance to aliphatic amines, the PMN substance may cause toxicity to aquatic organisms. Based on these data EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 2 ppb of the PMN substance in surface waters. EPA determined that use of the substance as described in the PMN did not present an unreasonable risk to aquatic organisms because the substance would not be released to water. EPA has determined that releases to surface waters greater than 2 ppb may result if the substance is used in marine paints. Based on this information the PMN substance meets the concern criteria at § 721.170 (b)(4)(ii).
Recommended testing: EPA has determined that an acute algal assay (40 CFR 797.1050), an acute daphnid assay (40 CFR 797.1300), and an acute fish assay (40 CFR 797.1400) will characterize environmental effects.
CFR citation: 40 CFR 721.5050.

PMN Number P-91-1243

Chemical name: (generic) Substituted cyclohexyldiamino ethyl ester.
CAS number: Not available.
Basis for action: The PMN substance will be used as an industrial chemical. Based on the analogy of the PMN substance to aliphatic amines, the PMN substance may cause toxicity to aquatic organisms. Based on these data EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 1 ppb of the PMN substance in surface waters. EPA determined that use of the substance as described in the PMN did not present an unreasonable risk because the substance would not be released to water. EPA has determined that other uses of the substance may result in releases to surface waters greater than 1 ppb. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that an acute algal assay (40 CFR 797.1050), an acute daphnid assay (40 CFR 797.1300), an acute fish assay (40 CFR 797.1400), and an acute fish assay (40 CFR 797.1400) modified with humic acid will characterize environmental effects.
CFR citation: 40 CFR 721.2980.

PMN Number P-92-131

Chemical name: (generic) Cyclic amide.
CAS number: Not available.
Basis for action: The PMN substance will be used as solvent. Based on the analogy of the PMN substance to neutral organic chemicals, the PMN substance may cause toxicity to aquatic organisms. Based on these data EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 70 ppb of the PMN substance in surface waters. EPA determined that use of the substance as described in the PMN did not present an unreasonable risk because the substance would not released to surface waters at concentrations above 70 ppb. EPA has determined that other uses of the substance may result in releases to surface water above 70 ppb. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that an acute algal assay (40 CFR 797.1050) will characterize the environmental effects of the PMN substance.
CFR citation: 40 CFR 721.2120.

PMN Number P-92-294

Chemical name: (generic) Diphenylmethane diisocyanate (MDI) modified.
CAS number: Not available.
Basis for action: The PMN substance will be used as a reactive component for structural article formation. Based on the known toxicity of analogous substances, the PMN substance may cause respiratory sensitization and other lung effects if inhaled. EPA determined that use of the substance as described in the PMN did not present an unreasonable risk because the substance would not be inhaled. EPA has determined that other uses of the substance may result in inhalation exposures. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(3)(ii).
Recommended testing: EPA has determined that a respiratory sensitization test (Karol et al., 1983 *Toxicology and Applied Pharmocology*, 68:229–241) and a dermal sensitization test in guinea pigs (40 CFR 798.4100) will characterize the sensitization effects of the PMN substance and that a 90-day subchronic toxicity test via the inhalation route (40 CFR 798.2450) will characterize other pulmonary effects of the PMN substance.
CFR citation: 40 CFR 721.2540.

PMN Number P-92-445

Chemical name: (generic) Fatty acid amine condensate, polycarboxylic acid salts.
CAS number: Not available.
Basis for action: The PMN substance will be used as a corrosion inhibitor. Based on the analogy of the PMN substance to aliphatic amines, the PMN substance may cause toxicity to aquatic organisms. Based on these data EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 4 ppb of the PMN substance in surface waters. EPA determined that use of the substance as described in the PMN did not present an unreasonable risk because the substance would not be released to water. EPA has determined that other uses of the substance may result in releases to surface waters greater than 4 ppb. Based on this information the PMN substance meets the concern criteria at § 721.170 (b)(4)(ii).
Recommended testing: EPA has determined that an acute algal assay (40 CFR 797.1050), an acute daphnid assay (40 CFR 797.1300), an acute fish assay (40 CFR 797.1400), and an acute fish assay (40 CFR 797.1400) modified with humic acid will characterize the environmental effects of the PMN substance.
CFR citation: 40 CFR 721.3620.

PMN Number P-92-446

Chemical name: (generic) Coco acid triamine condensate, polycarboxylic acid salts.
CAS number: Not available.
Basis for action: The PMN substance will be used as a corrosion inhibitor. Based on the analogy of the PMN substance to aliphatic amines, the PMN substance may cause toxicity to aquatic organisms. Based on these data EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 4 ppb of the PMN substance in surface waters. EPA determined that use of the substance as described in the PMN did not present an unreasonable risk because the substance would not be released to water. EPA has determined that other uses of the substance may result in releases to surface water greater than 4 ppb. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that an acute algal assay (40 CFR 797.1050), an acute daphnid assay (40 CFR 797.1300), an acute fish assay (40 CFR 797.1400), and an acute fish assay (40 CFR 797.1400) modified with humic acid will characterize the

environmental effects of the PMN substance.
CFR citation: 40 CFR 721.2086.

IV. Objectives and Rationale of the Rule

During review of the PMNs submitted for the 24 chemical substances that are subject to this SNUR, EPA determined that one or more of the criteria of concern established at § 721.170 were met.

EPA is issuing this SNUR for specific chemical substances which have undergone premanufacture review to ensure the following objectives: That EPA will receive notice of any company's intent to manufacture, import, or process a listed chemical substance for a significant new use before that activity begins; that EPA will have an opportunity to review and evaluate data submitted in a SNUR notice before the notice submitter begins manufacturing, importing, or processing a listed chemical substance for a significant new use; that, when necessary to prevent unreasonable risks, EPA will be able to regulate prospective manufacturers, importers, or processors of a listed chemical substance before a significant new use of that substance occurs; and that all manufacturers, importers, and processors of the same chemical substance are subject to similar requirements. Issuance of a final effective SNUR for a chemical substance does not signify that the substance is contained on the TSCA Inventory. Manufacturers, importers, and processors are responsible for ensuring that a new chemical substance subject to a final SNUR is contained on the TSCA Inventory.

V. Direct Final Procedure

EPA is issuing these SNURs as direct final rules, as described in § 721.160(c)(3) and 721.170(d)(4). In accordance with § 721.160(c)(3)(ii), this rule will be effective [insert date 60 days after date of publication in the **Federal Register**], unless EPA receives a written notice by [insert date 30 days after date of publication in the **Federal Register**] that someone wishes to make adverse or critical comments on EPA's action. If EPA receives such a notice, EPA will publish a notice to withdraw the direct final SNUR(s) for the specific substance(s) to which the adverse or critical comments apply. EPA will then propose a SNUR for the specific substance(s) providing a 30–day comment period.

This action establishes SNURs for 24 chemical substances. Any person who submits a notice of intent to submit adverse or critical comments must identify the substance and the new use to which it applies. EPA will not withdraw a SNUR for a substance not identified in a notice.

VI. Test Data and Other Information

EPA recognizes that section 5 of TSCA does not require developing any particular test data before submission of a SNUR notice. Persons are required only to submit test data in their possession or control and to describe any other data known to or reasonably ascertainable by them. Unit III. of this preamble lists those recommended tests for informational purposes. The recommended studies may not be the only means of addressing the potential risks of the substance. However, SNUR notices submitted for significant new uses without any test data may increase the likelihood that EPA will take action under section 5(e).

SNUR notice submitters should be aware that EPA will be better able to evaluate SNUR notices which provide detailed information on:

(1) Human exposure and environmental release that may result from the significant new use of the chemical substances.

(2) Potential benefits of the substances.

(3) Information on risks posed by the substances compared to risks posed by potential substitutes.

VII. Applicability of Rule to Uses Occurring Before Effective Date of the Final Rule

To establish a significant "new" use, EPA must determine that the use is not ongoing. The chemical substances subject to this rule have recently undergone premanufacture review. Section 5(e) orders have been issued in 16 cases and notice submitters are prohibited by the section 5(e) orders from undertaking activities which EPA is designating as significant new uses. In cases where EPA has not received a Notice of Commencement (NOC) and the substance has not been added to the Inventory, no other person may commence such activities without first submitting a PMN. For substances for which a NOC has not been submitted at this time, EPA has concluded that the uses are not ongoing. However, EPA recognizes in cases when chemical substances identified in this SNUR are added to the Inventory prior to the effective date of the rule, the substances may be manufactured, imported, or processed by other persons for a significant new use as defined in this rule before the effective date of the rule. However, all of the substances contained in this rule have CBI chemical identities, and since EPA has received a limited number of post-PMN *bona fide* submissions, the Agency believes that it is highly unlikely that many, if any, of the significant new uses described in the following regulatory text are ongoing.

As discussed at 55 FR 17376 (April 24, 1990), EPA has decided that the intent of section 5(a)(1)(B) is best served by designating a use as a significant new use as of this date of publication rather than as of the effective date of the rule. Thus, persons who begin commercial manufacture, import, or processing of the substances regulated through this SNUR will have to cease any such activity before the effective date of this rule. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires. EPA has promulgated provisions to allow persons to comply with this SNUR before the effective date. If a person were to meet the conditions of advance compliance in § 721.45(h) (53 FR 28354, July 17, 1988), the person will be considered to have met the requirements of the final SNUR for those activities. If persons who begin commercial manufacture, import, or processing of the substance between publication and the effective date of the SNUR do not meet the conditions of advance compliance, they must cease that activity before the effective date of the rule. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires.

VIII. Economic Analysis

EPA has evaluated the potential costs of establishing significant new use notice requirements for potential manufacturers, importers, and processors of the chemical substance subject to this rule. EPA's complete economic analysis is available in the public record for this rule (OPPTS–50598).

IX. Rulemaking Record

EPA has established a record for this rulemaking (docket control number OPPTS–50598). The record includes information considered by EPA in developing this rule.

A public version of the record without any confidential business information is available in the TSCA Public Docket Office from 8 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday, except legal holidays. The TSCA Public Docket Office is located at rm. NE–G004, 401 M St., SW., Washington, DC.

Any person who submits comments claimed as CBI must mark the comments as "confidential", "trade secret", or other appropriate designation. Comments not claimed as confidential at the time of submission will be placed in the public file. Any comments marked as confidential will be treated in accordance with the procedures in 40 CFR part 2. Any person submitting comments claimed to be confidential must prepare and submit a nonconfidential public version in triplicate of the comments that EPA can place in the public file.

X. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore requires a Regulatory Impact Analysis. EPA has determined that this rule will not be a "major" rule because it will not have an effect on the economy of $100 million or more, and it will not have a significant effect on competition, costs, or prices. While there is no precise way to calculate the total annual cost of compliance with this rule, EPA estimates that the cost for submitting a significant new use notice range from $4,552 to $12,166, including a $2,500 user fee payable to EPA to offset EPA costs in processing the notice. EPA believes that, because of the nature of the rule and the substances involved, there will be few SNUR notices submitted. Furthermore, while the expense of a notice and the uncertainty of possible EPA regulation may discourage certain innovation, that impact will be limited because such factors are unlikely to discourage an innovation that has high potential value.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), EPA has determined that this rule would not have a significant impact on a substantial number of small businesses. EPA has not determined whether parties affected by this rule would likely be small businesses. However, EPA expects to receive few SNUR notices for the substances. Therefore, EPA believes that the number of small businesses affected by this rule will not be substantial, even if all of the SNUR notice submitters were small firms.

C. Paperwork Reduction Act.

The information collection requirements contained in this rule have been approved by OMB under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), and have been assigned OMB control number 2070–0012.

Public reporting burden for this collection of information is estimated to vary from 30 to 170 hours per response, with an average of 100 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to Office of Management and Budget, Paperwork Reduction Project (2070–0012), Washington, D.C. 20503.

List of Subjects in 40 CFR Part 721

Chemicals, Environmental protection, Hazardous materials, Reporting and recordkeeping requirements, Significant new uses.

Dated: September 17, 1992.

Linda J. Fisher,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, 40 CFR part 721 is amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

2. By adding new § 721.840 to subpart E to read as follows:

§ 721.840 Alkyl substituted diaromatic hydrocarbons.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as an alkyl substituted diaromatic hydrocarbons (PMN P–91–710) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

3. By adding new § 721.2025 to subpart E to read as follows:

§ 721.2025 Substituted phenylimino carbamate derivative.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as a substituted phenylimino carbamate derivative (PMN P–91–487) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

4. By adding new § 721.2086 to subpart E to read as follows:

§ 721.2086 Coco acid triamine condensate, polycarboxylic acid salts.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as coco acid triamine condensate, polycarboxylic acid salts. (PMN P–92–446) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

5. By adding new § 721.2120 to subpart E to read as follows:

§ 721.2120 Cyclic amide.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as a cyclic amide (PMN P–92–131) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (concentration set at 70 ppb).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

6. By adding new § 721.2175 to subpart E to read as follows:

§ 721.2175 Salt of cyclodiamine and mineral acid.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as a salt of cyclodiamine and mineral acid (PMN P–91–838) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

7. By adding new § 721.2420 to subpart E to read as follows:

§ 721.2420 Alkoxylated dialkyldiethylenetriamine, alkyl sulfate salt.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as an alkoxylated dialkyldiethylenetriamine, alkyl sulfate salt (PMN P–91–288) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

8. By adding new § 721.2540 to subpart E to read as follows:

§ 721.2540 Diphenylmethane diisocyanate (MDI) modified.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as a diphenylmethane diisocyanate (MDI) modified (PMN P–92–294) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(v)(1), (v)(2), (w)(1), (w)(2), (x)(1), (x)(2), (y)(1), and (y)(2).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

9. By adding new § 721.2980 to subpart E to read as follows:

§ 721.2980 Substituted cyclohexyldiamino ethyl esters.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as substituted cyclohexyldiamino ethyl esters (PMN P–91–1243) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

10. By adding new § 721.3100 to subpart E to read as follows:

§ 721.3100 Oligomeric silicic acid ester compound with a hydroxylalkylamine.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as oligomeric silicic acid ester compound with a hydroxylalkylamine (PMN P–91–118) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(a).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

11. By adding new § 721.3360 to subpart E to read as follows:

§ 721.3360 Substituted ethanolamine.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as substituted ethanolamine (PMN P–91–490) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80 (v)(1), (v)(2), (w)(1), (w)(2), (x)(1), (x)(2), (y)(1), and (y)(2).

(ii) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N = 1 ppb).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Requirements as specified in § 721.125(a), (b), (c), (i), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

12. By adding new § 721.3620 to subpart E to read as follows:

§ 721.3620 Fatty acid amine condensate, polycarboxylic acid salts.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as a fatty acid amine condensate, polycarboxylic acid salts. (PMN P–92–445) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

13. By adding new § 721.3680 to subpart E to read as follows:

§ 721.3680 Ethylene oxide adduct of fatty acid ester with pentaerythritol.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as ethylene oxide adduct of fatty acid ester with pentaerythritol (PMN P–91–442) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

14. By adding new § 721.3720 to subpart E to read as follows:

§ 721.3720 Fatty amide.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as a fatty amide (PMN P–91–87) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

15. By adding new § 721.4460 to subpart E to read as follows:

§ 721.4460 Amidinothiopropionic acid hydrochloride.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as amidinothiopropionic acid hydrochloride (PMN P–91–102) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

16. By adding new § 721.4480 to subpart E to read as follows:

§ 721.4480 2-Imino-1,3-thiazin-4-one-5,6-dihydromonohydrochloride.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as 2-imino-1,3-thiazin-4-one-5,6-dihydromonohydrochloride (PMN P–91–101) is subject to reporting under this section for the significant new uses

described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f), (v)(1), (v)(2), (w)(1), (w)(2), (x)(1), and (x)(2).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

17. By adding new § 721.4720 to subpart E to read as follows:

§ 721.4720 Disubstituted phenoxazine, chlorometalate salt.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as disubstituted phenoxazine, chlorometalate salt (PMN P–90–0002) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(g).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

18. By adding new § 721.5050 to subpart E to read as follows:

§ 721.5050 2,2'-[(1-Methylethylidene)bis[4,1-phenyloxy[1-(butoxymethyl)-(2,1-ethanediyl]oxymethylene]]bisoxirane, reaction product with a diamine.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as 2,2'-[(1-methylethylidene)bis[4,1-phenyloxy[1-(butoxymethyl)-(2,1-ethanediyl]oxymethylene]]bisoxirane, reaction product with a diamine (PMN P–91–934), is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

19. By adding new § 721.5200 to subpart E to read as follows:

§ 721.5200 Disubstituted phenylazo trisubstituted naphthalene.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as disubstituted phenylazo trisubstituted naphthalene (PMN P–91–328) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(g), (v)(1), (w)(1), (x)(1), and (y)(2).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Requirements as specified § 721.125(a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

20. By adding new § 721.6200 to subpart E to read as follows:

§ 721.6200 Fatty acid polyamine condensate, phosphoric acid ester salts.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substances identified as fatty acid polyamine condensate, phosphate ester salts (PMNs P–90–1984 and P–90–1985) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

21. By adding new § 721.6220 to subpart E to read as follows:

§ 721.6220 Aryl sulfonate of a fatty acid mixture, polyamine condensate.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as an aryl sulfonate of a fatty acid mixture, polyamine condensate (PMN P–91–584) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

22. By adding new § 721.6540 to subpart E to read as follows:

§ 721.6540 Acrylamide, polymers with tetraalkyl ammonium salt and polyalkyl, aminoalkyl methacrylamide salt.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substances identified generically as acrylamide, polymers with tetraalkyl ammonium salt and polyalkyl, amino alkyl methacrylamide salt (PMNs P–88–2100 and P–88–2169) are subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new use is:

(i) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

23. By adding new § 721.6560 to subpart E to read as follows:

§ 721.6560 Acrylic acid, polymer with substituted ethene.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as acrylic acid, polymer with substituted ethene (PMN P–91–521) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N = 200 ppb).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

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Thursday
October 8, 1992

Part VI

Department of the Interior

Bureau of Indian Affairs

25 CFR Parts 101 and 103

Loans to Indians From the Revolving Loan Fund, Loan Guaranty, Insurance, and Interest Subsidy; Final Rule

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Parts 101 and 103

RIN 1076-AC38

Loans to Indians From the Revolving Loan Fund, Loan Guaranty, Insurance, and Interest Subsidy

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule.

SUMMARY: The Indian Financing Act Amendments of 1988 increased the maximum amounts of loans to individuals which can be guaranteed and liberalized provisions for the sale of guaranteed loans so that they may be purchased by "any person." These amendments require changes to agency regulations on financial activities.

Other changes comply with OMB Circulars A-129, Managing Federal Credit Programs, and A-70, Federal Credit Policy.

Other changes reflect the current policies in the administration of the Revolving Loan and the Loan Guaranty Programs.

EFFECTIVE DATE: November 9, 1992.

FOR FURTHER INFORMATION CONTACT: Woodrow B. Sneed, Division of Financial Assistance, Bureau of Indian Affairs, Mail Stop 4060 MIB, 1849 C Street NW., Washington, DC 20240, telephone (202) 208-4796.

SUPPLEMENTARY INFORMATION: These amendments are published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8. The policy of the Department of the Interior is, whenever practical, to afford the public an opportunity to participate in the rulemaking process. Accordingly, these proposed regulations were published in the **Federal Register** on September 23, 1991 and interested persons were invited to submit written comments regarding the proposed rule.

Fifteen letters of comment were received. Twelve commenters objected to proposed § 103.13 reducing the maximum amount of guarantees from 90 percent to 80 percent. One comment was in favor of the 80 percent limitation. The arguments that reducing the amount of guaranty would drastically limit the ability of eligible borrowers to find lenders were persuasive, so the loan guaranty limit will remain at 90 percent.

Three comments objected to the requirement in § 101.3 that the borrower have at least 20 percent equity in the business being financed with a direct loan. The commenters feel this requirement will render the loan program inaccessible to tribes and individuals most in need of loans. Loans, however, under the Indian Financing Act, 25 U.S.C. 1465, may be made only when, in the judgment of the Secretary of the Interior, there is a reasonable prospect of repayment. Experience has proven that debt financing approaching 100 percent drastically increases the likelihood of loan default. Most private banks require at least 30 percent equity to support loan repayment. Less than a 20 percent equity requirement is believed to be insufficient to ensure the repayment standard required by the Indian Financing Act.

The Supplementary Information part of the preamble to the proposed rule points out that the requirement for 20 percent equity applies to both direct and guaranteed loans. This proposed requirement was inadvertently left out of part 103, the rule for guaranteed loans. We are putting the equity requirement in § 103.10 of that part.

One commenter pointed out that the definition of "equity" in §§ 101.1 and 103.1 could include intangible assets, such as goodwill, and assets which might not be subject to a lender's lien. We have modified the definition to avoid these results.

One commenter perceived an inconsistency between §§ 101.11 and 103.44, the first of which allows a charge for loan origination while the latter does not. We have deleted the provision allowing a loan origination fee in § 101.11 to remove this inconsistency.

Two writers commented that the penalties on default under proposed § 101.15 are too harsh. These are penalties which are enforceable against borrowers from all Federal lending programs. They are listed in OMB Circular A-129. Borrowers should be given notice of their availability to the Government and they will remain in the final rule.

One writer suggested requirements for a Debt Collection Certificate showing that borrowers were aware of the remedies available to collect debts owed the Government and a foreclosure/liquidation plan submitted by the lender prior to foreclosure. The proposed rule adequately addresses problems with which these proposals are concerned and they will not be added to the final rule.

Another commenter suggested allowing existing lenders to pay a one time premium. We have added language to § 103.43 to allow this option. The same commenter suggested changing § 103.46 so that it is clear that a late payment date on invoices is required and not discretionary. We have changed "should" to "shall" in the third sentence of that section to accomplish this result.

The Department of the Interior has determined that this document is not a major action under Executive Order 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

The Department has further determined that this proposed rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969.

The collections of information contained in § 101.4, 103.15, and 103.34 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 et seq. and assigned clearance number 1076-0020. The information is being collected to implement the requirements of 25 U.S.C. 1451 et seq. and 25 U.S.C. 1481 et seq. and will be used to establish eligibility for loans or loan guaranties. Response is required to obtain a benefit in accordance with 25 U.S.C. 1451 et seq. and 1481 et seq. Public reporting burden for this information is estimated to average 15 minutes to 3 hours per response to part 101 collections and 30 minutes per response to part 103 collections. This is the same burden as estimated in the rules being amended and includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information to Information Clearance Officer; Bureau of Indian Affairs; Washington, DC 20240; and to the Office of Management and Budget; Paperwork Reduction Project (1076-0020); Washington, DC 20503.

Amendments to part 103 increase the amount of a loan to individual Indians which can be guaranteed and provide that guaranteed loans can be purchased by "any person."

These changes reflect changes in the Indian Financing Act by the 1988 amendments.

Other changes listing remedies on default and limiting the amount of guaranties comply with OMB Circular A-129, Managing Federal Credit Programs, and A-70, Federal Credit Policy. The section on use of tribal funds for lending programs and economic development is deleted because the

disposition of tribal funds is the business of the tribes and should not be restricted unnecessarily by excessive regulation.

A provision that tribes may mortgage their unrestricted lands is deleted because there is no authority for it, unless the land was purchased subject to a mortgage.

Amendments clarify that the lender of guaranteed or insured loans retains responsibility for administering loans even if the guaranty certificate is conveyed to another party. To this end, most references to holders of guaranty certificates are deleted.

Amendments provide that interest subsidies on guaranteed or insured loans will be discontinued any time a guaranty or insurance agreement terminates for any reason.

The prohibition on points, finders fees, loan origination fees, bonuses, and commissions under the loan guaranty and insurance program is emphasized.

Amendments provide that lenders will share pro rata in proceeds from the liquidation of a borrower's assets upon default after the United States has recovered its costs in managing and disposing of the collateral.

A requirement that borrowers must provide at least 20 percent equity in the business being financed with a direct or guaranteed loan is added. Premium payments are required in a lump sum at the beginning of a loan.

The primary author of this document is Woodrow B. Sneed, Division of Financial Assistance, Bureau of Indian Affairs, telephone number (202) 208–4796.

List of Subjects in 25 CFR Parts 101 and 103

Indians—business and finance, Loan programs—Indians, Loan programs—business.

For the reasons set out in the preamble, parts 101 and 103 of title 25, chapter I, of the Code of Federal Regulations are amended as set forth below:

PART 101--LOANS TO INDIANS FROM THE REVOLVING LOAN FUND

1. The authority citation for 25 CFR part 101 is revised to read as follows:

Authority: 25 U.S.C. 1469.

2. Section 101.1 is revised to read as follows:

§ 101.1 Definitions.

As used in this part 101:

Applicant means an applicant for a United States Direct Loan from the revolving loan fund or a loan from a relending organization.

Commissioner means the Commissioner of Indian Affairs or an authorized representative.

Cooperative association means an association of individuals organized pursuant to state, Federal, or tribal law, for the purpose of owning and operating an economic enterprise for profit with profits distributed or allocated to patrons who are members of the organization.

Corporation means an entity organized as a corporation pursuant to state, Federal, or tribal law, with or without stock, for the purpose of owning and operating an economic enterprise.

Default means failure of a borrower to:

(1) Make scheduled payments on a loan when due,

(2) Obtain the lender's approval for disposal of assets mortgaged as security for a loan, or

(3) Comply with the covenants, obligations, or other provisions of a loan agreement.

Economic enterprise means any Indian-owned commercial, industrial, agricultural, or business activity established or organized for the purpose of profit, provided that eligible Indian ownership constitutes not less than 51 percent of the enterprise.

Equity means the borrower's residual ownership, after deducting all business debt, of tangible business assets used in the business being financed, on which a lender can perfect a first lien position.

Financing statement means the document filed or recorded in county or state offices pursuant to the provisions of the Uniform Commercial Code notifying third parties that a lender has a lien on the chattels and/or crops of a borrower.

Indian means a person who is a member of an Indian tribe as defined in this part.

Organization means the governing body of any Indian tribe, or entity established or recognized by such governing body for the purpose of the Indian Financing Act.

Other organization means any non-Indian individual, firm, corporation, partnership, or association.

Partnership means a form of business organization in which two or more legal persons are associated as co-owners for the purposes of business or professional activities for private pecuniary gain, organized pursuant to tribal, state, or Federal law.

Reservation means Indian reservation, California rancheria, public domain Indian allotment, former Indian reservation in Oklahoma, and land held by Alaska Native groups incorporated under the provisions of the Alaska Native Claims Settlement Act (85 Stat. 688), as amended.

Revolving loan fund means all funds that are now or hereafter a part of the revolving fund authorized by the Act of June 18, 1934 (48 Stat. 986), the Act of June 26, 1936 (49 Stat. 1968) and the Act of April 14, 1950 (64 Stat. 44), as amended and supplemented including sums received in settlement of debts for livestock pursuant to the Act of May 24, 1950, (64 Stat. 190) and sums collected in repayment of loans made, including interest or other charges on loans, and any funds appropriated pursuant to Section 108 of the Indian Financing Act of 1974 (88 Stat. 77).

Secretary means the Secretary of the Interior.

Tribe means any Indian tribe, bank, nation, rancheria, pueblo, colony or community, including any Alaska Native village or any regional, village, urban or group corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), as amended, which is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs.

3. Section 101.3 is amended by adding a sentence at the end of paragraph (a) as follows:

§ 101.3 Eligible borrowers under United States direct loan program.

(a) * * * In addition, the applicant will be required to have equity equal to 20 percent of the total cost of a new enterprise, or 20 percent of the total cost of expansion of an existing enterprise.

* * * * *

4. Section 101.4 is amended by removing the second sentence and by adding three new sentences in its place as follows:

§ 101.4 Applications.

* * * Applications shall include the name, current address and telephone number of the applicant(s); current and prior Taxpayer Identification Number—Employer Identification Number if a business entity, Social Security Number if an individual; and current employer's name, address, and telephone number; amount of the loan requested; purpose for which loan funds will be used; and security to be offered; period of the loan, assets, liabilities and repayment capacity of the applicant; budgets reflecting income and expenditures of the applicant; and any other information necessary to adequately evaluate the application. The borrower must sign a statement declaring no delinquency on Federal taxes or other Federal debt and borrower's good standing on dealings in

procurement or non-procurement with the Federal Government. The Bureau will obtain a current credit bureau report and prescribe procedures to be used in handling loan proceeds. * * *

5. Section 101.6 is amended by adding the following sentence at the end of paragraph (a):

§ 101.6 Modification of loans.

(a) * * * In addition, a current credit bureau report, obtained by the Bureau of Indian Affairs, will be made a part of the modification request.

* * * * *

6. Section 101.11 is amended by revising paragraph (b) and (c) as follows:

§ 101.11 Interest.

* * * * *

(b) Additional charges to cover loan administration costs, including credit reports, may be charged to borrowers.

(c) Education loans may provide for deferral of interest while the borrower is in school full time or in the military service.

* * * * *

7. Section 101.15 is amended by adding new paragraphs (j)-(s) as follows:

§ 101.15 Penalties on default.

* * * * *

(j) Report the name and account information of a delinquent borrower to a credit bureau.

(k) Assess additional interest and penalty charges for the period of time that payment is not made.

(l) Assess charges to cover additional administrative costs incurred by the Government to service the account.

(m) Offset amounts owed the borrower under other Federal programs including other programs administered by the Bureau of Indian Affairs.

(n) Refer the account to a private collection agency to collect the amount due.

(o) Refer the account to the U.S. Department of Justice for collection by litigation.

(p) If the borrower is a current or retired Federal employee, take action to offset the borrower's salary or civil service retirement benefits.

(q) Refer the debt to the Internal Revenue Service for offset against any amount owed the borrower as an income tax refund.

(r) Report any written-off debt to the Internal Revenue Service as taxable income to the borrower.

(s) Recommend suspension or debarment from conducting further business with the Federal Government.

§ 101.20 [Removed]

§§ 101.21 through 101.26 [Redesignated as 101.20 through 101.25]

(8) Section 101.20 is removed and §§ 101.21 through 101.26 are redesignated §§ 101.20 through 101.25.

§ 101.20 [Amended]

9. Newly redesignated § 101.20 is amended by removing paragraph (e) and redesignating paragraph (f) as paragraph (e).

PART 103—LOAN GUARANTY, INSURANCE, AND INTEREST SUBSIDY

10. The authority citation for 25 CFR part 103 is revised to read as follows:

Authority: 25 U.S.C. 1498.

11. Section 103.1 is revised to read as follows:

§ 103.1 Definitions.

As used in this part:

Applicant means one who applies for a guaranteed or insured loan.

Borrower means the Indian organization or individual Indian receiving a guaranteed or insured loan.

Commissioner means the Commissioner of Indian Affairs or his authorized representative.

Cooperative Association means an association of individuals organized pursuant to state, Federal, or tribal law for the purpose of owning and operating an economic enterprise for profit with profits distributed or allocated to patrons who are members of the organization.

Corporation means an entity organized as a corporation pursuant to state, Federal, or tribal law, with or without stock for the purpose of owning and operating an economic enterprise.

Default means failure of a borrower to:

(1) Make scheduled payments on a loan when due,

(2) Obtain the lender's approval for disposal of assets mortgaged as security for a loan, or

(3) Comply with the covenants, obligations, or other provisions of a loan agreement.

Economic enterprise means any Indian-owned commercial, industrial, agricultural, or business activity established or organized for the purpose of profit, provided that eligible Indian ownership constitutes not less than 51 percent of the enterprise.

Equity means the borrower's residual ownership, after deducting all business debt, of tangible business assets used in the business being financed, on which a lender can perfect a first lien position.

Financing statement means the document filed or recorded in county or state offices pursuant to the provisions of the Uniform Commercial Code notifying third parties that a lender has a lien on the chattels and/or crops of a borrower.

Guaranty means the obligation assumed by the United States to repay a specific percentage of a loan upon default of the borrower pursuant to the regulations in this part.

Indian means a person who is a member of an Indian tribe as defined in this part.

Insured loan means a loan made pursuant to an agreement approved by the Commissioner with a financial institution, under which an obligation is assumed by the United States to indemnify the lender for a percentage of the loss on loans, pursuant to the regulations in this part.

Interest subsidy means payments which may be made by the United States to lenders making guaranteed or insured loans to reduce the interest rate which borrowers pay the lenders to the rate established pursuant to section 104 of the Indian Financing Act of 1974 (25 U.S.C. 1451 et seq.).

Mortgage means a mortgage or deed of trust evidencing an encumbrance of land, a mortgage or security agreement executed as evidence of a lien against crops and chattels, and a mortgage or deed of trust evidencing a lien on leasehold interests.

Organization means the governing body of any Indian tribe or entity established or recognized by such governing body for the purpose of the Indian Financing Act.

Partnership means a form of business organization in which two or more persons are associated as co-owners for the purposes of business or professional activities for private pecuniary gain organized under tribal, state, or Federal law.

Premium means the charges paid by lenders for the guaranty or insurance of loans under provisions for reimbursement of lenders by the United States for a percentage of losses incurred.

Reservation means Indian reservation, California rancheria, public domain Indian allotment, former Indian reservation in Oklahoma, and land held by Alaska Native groups incorporated under the provisions of the Alaska Native Claims Settlement Act (85 Stat. 688), as amended.

Secretary means the Secretary of the Interior.

Tribe means any Indian tribe, band, nation, rancheria, pueblo, colony or community, including any Alaska Native village or any regional, village, or urban

or group corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) as amended which is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs.

12. Section 103.7 is amended by removing the first sentence and adding two sentences in its place as follows:

§ 103.7 Eligible organizations.

Tribes and Indian organizations having a form of organization satisfactory to the Commissioner recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs, and indicating reasonable assurance of repayment, are eligible for guaranteed or insured loans. If Indian ownership of an economic enterprise falls below 51 percent, the borrower shall be in default and the guaranty shall cease and the interest subsidy shall be discontinued. * * *

13. Section 103.10 is amended by adding new paragraphs (e) and (f) as follows:

§ 103.10 Ineligible loans.

* * * * *

(e) Loans which are linked to Federally tax-exempt bond obligations.

(f) Loans to a borrower whose equity, as defined in § 103.1, in the business being financed is less than 20 percent.

14. Section 103.13 is amended by revising paragraph (a) to read as follows:

§ 103.13 Amount of guaranty.

(a) The percentage of a loan that is guaranteed shall be the minimum necessary to obtain financing for an applicant, but may not exceed 90 percent of the unpaid principal and interest. The liability under the guaranty shall increase or decrease pro rata with an increase or decrease in the unpaid portion of the principal amount of the obligation. No loan to an individual Indian, partnership, or other non-tribal organization may be guaranteed for an unpaid principal amount in excess of $500,000 or such maximum amount provided in any amendments to the Indian Financing Act of 1974.

* * * * *

15. Section 103.15 is amended by revising the heading of the section and paragraphs (a) and (c) as follows:

§ 103.15 Applications for loan guaranties or insurance.

(a) Applicants for loans will deal directly with lenders for both guaranteed and insured loans. The form of loan applications will be determined by the lender. The application for a loan guaranty or insurance, or attachments thereto, must include or show the following:

(1) The name and address of the borrower with the tax identification number if the borrower is a business entity or the social security number if an individual;

(2) A statement signed by the borrower that the borrower is not delinquent with any Federal tax or other obligations;

(3) The plan of operation for the economic enterprise including an identified target market for the goods or services being offered;

(4) Purpose(s) and the amount of the loan;

(5) Security to be given which shall be itemized with valuations of such collateral and the method used to value the collateral, the date of such valuation, who performed the valuation, and the creditor priority positions;

(6) Hazard and liability insurance to be carried;

(7) Interest rate;

(8) Repayment schedule;

(9) Repayment source(s);

(10) How title to the property to be purchased with the loan will be taken;

(11) Current financial statements of the loan applicant;

(12) Description and dollar value of the equity or personal investment to be made by the applicant;

(13) Charges pursuant to § 103.44;

(14) Pro forma balance sheets, operating statements and cash flow statements for at least three years;

(15) Balance sheets and operating statements for the two preceding years, or applicable period thereof if already in operation;

(16) The lender's evaluation of the economic feasibility of the enterprise and internal credit memorandum; and

(17) A current credit bureau report on the borrower.

Applications will also show the percentage of guaranty requested.

* * * * *

(c) The Commissioner may review applications for guaranteed loans individually and independently from the lending institution.

16 Section 103.16 is revised to read as follows:

§ 103.16 Loan otherwise available.

If the information in an application for a guaranteed or insured loan indicates that the applicant may obtain the loan without a guaranty or insurance, the Commissioner may deny the request for a guaranty or insurance.

17. Section 103.17 is amended by revising the second sentence of paragraph (a) and adding a third sentence as follows:

§ 103.17 Refinancing.

(a) * * * Applications to refinance loans to an economic enterprise will be accompanied by financial and cash flow statements required in § 103.15(a) (1) through (17).

A guaranty of a loan to refinance existing indebtedness will be considered only if the loan will result in a significantly lower lender's interest rate to the borrower, or provide a substantially longer term for repayment of the loan, or decrease the loan-to-asset value ratio of the business being financed.

* * * * *

18. Section 103.23 is amended by revising the last sentence in paragraph (b) as follows:

§ 103.23 Increase in principal of loans.

* * * * *

(b) * * * If the financing involves an economic enterprise, the application must be accompanied by the information required in § 103.15(a) (1) through (17) of this part.

* * * * *

19. Section 103.27 is amended by adding a sentence at the end as follows:

§ 103.27 Amount of security.

* * * The lender shall itemize and describe the collateral given as security as described in 103.15(a) (5) and (10) of this part.

20. Section 103.30 is amended by revising paragraph (a) as follows:

§ 103.30 Land.

(a) Indian individuals may execute mortgages or deeds of trust on nontrust or unrestricted land as security without the approval of any Federal official.

* * * * *

21. Section 103.34 is amended by adding a new sentence after the first sentence as follows:

§ 103.34 Restrictions

* * * Lenders will document any and all prior security interests of record with respect to proposed collateral. * * *

22. Section 103.36 is revised to read as follows:

§ 103.36 Default on guaranteed loans.

(a) Within 45 calendar days after the occurrence of a default, the lender shall notify the Commissioner by certified or registered mail showing the name of borrower, guaranty certificate number, amount of unpaid principal, amount of principal delinquent, amount of interest accrued and unpaid to date of notice.

amount of interest delinquent at time of notice, and other failure of the borrower to comply with provisions of the loan agreement. Within 60 calendar days after default on a loan, the lender shall proceed as prescribed in either paragraph (b), (c), or (d) of this section, unless an extension of time is requested by the lender and approved by the Commissioner. The request for an extension shall explain the reason why a delay is necessary and the estimated date on which action will be initiated. Failure of the lender to proceed with action within 60 calendar days or the date to which an extension is approved by the Commissioner shall cause the guaranty certificate to cease being in force or effect. If the Commissioner is not notified of the failure of a borrower to make a scheduled payment or of other default within the required 45 calendar days, the Commissioner will proceed on the assumption that the scheduled payment was made and that the loan agreement is current and in good standing. The Commissioner will then decrease the amount of the guaranty pro rata by the amount of the due installment and the lender will have no further claim for guaranty as it applied to the installment, except for the interest subsidy on guaranteed loans which may be due.

(b) The lender may make written request that payment be made pursuant to the provisions of the guaranty certificate or guaranty agreement. If the Commissioner finds that a loss has been suffered, the lender may be paid the pro rata portion of the amount guaranteed including unpaid interest.

(c) The borrower and the lender may agree upon an extension of the repayment terms or other forbearance for the benefit of the borrower. The lender may extend all reasonable forbearance if the borrower becomes unable to meet the terms of a loan. However, such forbearance will not be extended if it will increase the likelihood of a loss on a loan. Agreements between a lender and a borrower shall be in writing and will require approval by the Commissioner.

(d) The lender may advise the Commissioner in writing that suit or foreclosure is considered necessary and proceed to foreclosure and liquidation of all security interests. On completion of foreclosure and liquidation, if the Commissioner determines that a loss has been suffered, the lender will be reimbursed for the pro rata portion of the amount of unpaid principal and interest guaranteed. A lender will submit a claim for reimbursement for losses on a form furnished by the Commissioner and will furnish any additional information needed to establish the amount of the claim. On reimbursement of a lender for the pro rata amount of the loss guaranteed as provided in the guaranty certificate, the lender will subrogate its rights and interest in the loan to the United States and assign the loan obligations and security for the loan to the United States. The Commissioner may establish the date on which accrual of interest or charges shall cease. This date may not be later than the date of judgment and decree of foreclosure or sale. The Commissioner will take any action necessary to protect the interest of the United States.

Subsequent to subrogation and assignment, any collections shall be for the account of the United States up to the amount paid on the guaranty plus any costs or expenses incurred by the United States. Collections will be deposited in the loan guaranty and insurance fund established pursuant to this part. Any amounts collected in excess of those necessary to reimburse the United States for amounts paid under the guaranty plus costs or expenses shall be paid to the lender up to the amount of the lender's losses. Any residue from collection shall go to the borrower.

§ 103.38 [Amended]

23. Section 103.38 is amended by removing the word "deems" in the first sentence and adding in its place "deemed."

24. Section 103.42 is amended by revising the introductory text of paragraph (a); adding a new paragraph (a)(5); removing the second sentence in paragraph (c); and adding a sentence at the end of paragraph (c); as follows:

§ 103.42 Interest subsidy.

(a) The Commissioner may pay an interest subsidy to lenders on loans which are guaranteed or insured under this part 103 at rates which are necessary to reduce the interest rate payable by the borrowers to a rate determined in accordance with title I, section 104, of the Indian Financing Act of 1974 (Pub. L. 93–262, 83 Stat. 77). The rate of subsidy will be established by the Commissioner at the time of issuance of a guaranty certificate or insurance agreement on loans requiring approval by the Commissioner. Interest subsidy payments by the United States shall be discontinued on such loans if the lender elects to discontinue the guaranty or insurance or causes the termination of the guaranty or insurance by failure to make premium payments as required by § 103.43, or when one of the following occurs:

* * * * *

(5) Cash flow form the business being financed appears sufficient to pay for full debt service based on periodic review by the Commissioner. Cash flow shall be deemed sufficient to pay debt service when earnings before interest and taxes, after adjustments for extraordinary items, equal or exceed industry norms.

* * * * *

(c) * * * The interest subsidy rate established by the Commissioner will be in effect for three years. At the end of the third year the need for subsidy will be reviewed and extended on an annual basis for the next two years, if justified.

27. Section 103.43 is revised as follows:

§ 103.43. Premium charges.

A premium of 2.0 percent of the guaranteed portion of a loan will be charged to lenders. The lender may increase the principal amount of the loan by the cost of the premium and charge it to the borrower. The lender shall pay the premium within 90 days of the date of approval of the loan guaranty. Existing lenders may elect to modify their Loan Guaranty and Insurance Agreements with the Bureau of Indian Affairs so as to pay future premium payments in a lump sum. If the guaranty premium is not paid within 90 days of approval of the loan guaranty or modification of the agreement, the Commissioner will send the lender a notice of non-payment. If the premium is not paid within 30 days of the receipt of this notice, the guaranty shall be subject to termination.

28. Section 103.44 is amended by revising the last sentence as follows:

§ 103.44 Other charges.

* * * Payment by the borrower of points, finders fees, loan origination fees, bonuses or commissions for loans guaranteed under this part is prohibited.

29. Section 103.46 is amended by designating the existing paragraph as paragraph (a) and adding paragraph (b) as follows:

§ 103.46 Loan servicing.

* * * * *

(b) Loan servicing must meet the following standards regarding billing and documentation. Payments must be routinely invoiced, in most cases on a monthly basis. Invoices shall include the date the payment is due and the date the payment will be considered late (i.e., grace period). Borrowers should be encouraged to use pre-authorized debits

or credit cards when making payments. Loan files must contain current information on payment history, including delinquencies and defaults, and any subsequent loan action concerning deferrals, refinancing, or rescheduling. There should be a record of the time and outcome of each contact with the borrower, including notification of delinquent status, requests for repayment, and intent to report the delinquent debt to credit bureaus or to refer debts to collection agencies.

30. Section 103.51 is amended by revising the first two sentences to read as follows:

§ 103.51 Sale or assignment of guaranteed loans.

Any guaranteed loan, including the security and guaranty certificate, may be sold to any person. The person acquiring the loan shall notify the Commissioner in writing with 30 days after acquisition. * * *

William D. Bettenberg,

Acting Assistant Secretary—Indian Affairs.

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District of Columbia Supplemental Appropriations and Rescissions Act, 1992. (Oct. 5, 1992; 106 Stat. 1422; 26 pages) Price: $1.00

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S. 3175/P.L. 102-384

National and Community Service Technical Amendment Act of 1992. (Oct. 5, 1992; 106 Stat. 1455; 5 pages) Price: $1.00

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