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Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law Numbers and Federal Register finding aids is available on 202–275–1538 or 275–0920.

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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.

Federal Register
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Presidential Documents

Title 3—

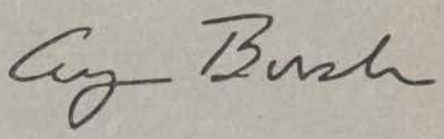
The President

Notice of December 14, 1992

Continuation of Libyan Emergency

On January 7, 1986, by Executive Order No. 12543, President Reagan declared a national emergency to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States constituted by the actions and policies of the Government of Libya. On January 8, 1986, by Executive Order No. 12544, the President took additional measures to block Libyan assets in the United States. The President has transmitted a notice continuing this emergency to the Congress and the **Federal Register** every year since 1986. On April 15, 1992, I barred authorization for aircraft to take off from, land in, or overfly the United States, if the aircraft, as part of the same flight or as a continuation of that flight, is destined to land in or has taken off from Libya. Because the Government of Libya has continued its actions and policies in support of international terrorism, the national emergency declared on January 7, 1986, and the measures adopted on January 7 and January 8, 1986, and April 15, 1992, to deal with that emergency, must continue in effect beyond January 7, 1993. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing the national emergency with respect to Libya.

This notice shall be published in the **Federal Register** and transmitted to the Congress.



THE WHITE HOUSE,
December 14, 1992.

[FR Doc. 92-30807
Filed 12-15-92; 2:42 pm]
Billing code 3195-01-M

Editorial note: For the President's message to the Congress on the continuation of the state of emergency with Libya, see issue no. 51 of the *Weekly Compilation of Presidential Documents.*

Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

7 CFR Part 68

RIN 0580–AA18

Fees for Rice Inspection and Laboratory Test Services

AGENCY: Federal Grain Inspection Service,[1] USDA.

ACTION: Final rule.

SUMMARY: On April 17, 1991, the Federal Grain Inspection Service (FGIS) published an interim rule in the Federal Register (56 FR 15483). The interim rule implemented: (1) Fee increases for rice inspection and laboratory test services, (2) a unit fee per hundred weight (CWT) for all rice inspection services performed on lots, at rest, at export locations, (3) added several laboratory test services and consolidated others for clarity and efficiency, and (4) if needed, additional fee increases for rice inspection services on January 1, 1993, and January 1, 1995, respectively.

FGIS is adopting the interim rule without change. The Agency has also confirmed that the January 1, 1993, and January 1, 1995, rice inspection service fee increases contained in the interim rule are needed to cover operating costs including related supervisory and administrative costs.

DATES: January 19, 1993.

FOR FURTHER INFORMATION CONTACT: George Wollan, Federal Grain Inspection Service, USDA, Room 0624-South Building, P.O. Box 96454, Washington, DC 20090–6454; (202) 720–0292.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This final rule has been issued in conformance with Executive Order 12291 and Departmental Regulation 1512–1. This action has been classified as nonmajor because it does not meet the criteria for a major regulation established in the Order.

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Regulatory Flexibility Act Certification

John C. Foltz, Administrator, FGIS, has determined that this final rule will not have a significant economic impact on a substantial number of small entities because most users of the inspection services do not meet the requirements for small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*).

Information Collection and Recordkeeping Requirements

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the information collection requirements contained in this rule being amended have been previously approved by the Office of Management and Budget under control number 0580–0013.

Background

On April 17, 1991, FGIS published in the Federal Register (56 FR 15483) an interim final rule that increased fees for rice inspection and laboratory test services. This interim rule was effective April 17, 1991, and provided for a comment period ending on May 17, 1991. No comments were received.

This final rule confirms the changes in laboratory services implementation on April 17, 1991 and confirms the need for the January 1, 1993, and January 1, 1995, increases in rice inspection fees as implemented in the interim final rule.

* * * *Changes in Laboratory Services*

FGIS in the interim rule added several new laboratory test services and consolidated others for clarity and efficiency. The new tests were required to accommodate frequent grain and food industry requests for these services. The additions are as follows: Alpha monoglycerides, Brix, Color test (syrups), Moisture average (crackers), Pesticide residue (carbon tetrachloride, methyl bromide & ethylene dibromide), Visual exam (hops pellet), Visual exam (pasta), and Water activity.

Additions to existing tests are as follows: To Bostwick (uncooked/cook test/dispersibility) from Bostwick (uncooked), to Popping ratio/value popcorn form Popping value (popcorn), and to Salt or sodium content from Salt content.

Deletions to existing tests are as follows: to Appearance & odor from Appearance, flavor and odor-oils, to Moisture & volatile matter from Moisture and Volatile matter-oil and shortening, to Potassium bromate from Potassium bromate-quantitative, and to Protein from Protein, Kjeldahl.

Consolidations of existing tests are as follows: To Calcium from Calcium (AOAC) and Calcium enrichment, and to Dough handling (baking) from Baking test-bread and Loaf volume.

Name changes are as follows: To Cold test (oil) from Clarity of oil involving heating, to Lovibond color from Color lovibond, to Moisture from Moisture-oven, to Performance test (prepared bakery mix) from Baking test-cake, to Sanitation-filth (light) from Filth-light, to Visual exam (insoluble impurities, oils & shortening) from Insoluble impurities-oil and shortening, to Visual exam (pasta) from Checked and broken macaroni units, to Visual exam (total foreign material other than cereal grains) from Foreign material-processed grain products, and to Wiley melting point from Melting point-wiley.

FGIS is also deleting several tests that are no longer requested. *Those tests being deleted are:* Acidity Greek, Acid value-oil, Arachidic acid, Baume, Coliform, Color-bleached, Color-gardner, Color-oil & shortening, Congeal point, Cooking test, Density, Dextrose equivalent, Diastatic activity of flour, Farinograph characteristics, Fat-acidity, Filth-heavy, Foam test, Foots-heated and/or chilled, Heating test-oil & shortening, Insoluble bromides, Lysine

[1] The authority to exercise the functions of the Secretary of Agriculture contained in the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621–1627), concerning inspection and standardization activities related to grain and similar commodities and products thereof has been delegated to the Administrator Federal Grain Inspection Service (7 U.S.C. 75a; 7 CFR 68.5).

from fortification, Lysine from hydrolysis of protein, Maltose value-flour, Marine oil in vegetable oil-qualitative, Moisture-distillation, Neutral oil loss, Nitrogen solubility, index, Oven leak test-oil can, Oil content-oilseed, Particle size-flour, Potassium bromate-qualitative, Purity-monosodium glutamate, Reducing sugars, Refractive index, Saponification number, Sedimentation, Softening point, Specific gravity-oils, Starch damage-flour, Sucrose, Test weight per bushel-other than grain, Viscosity, Water soluble protein, and Xanthydrol test for rodent urine.

Further, the Laboratory Report fee of $3.00 was deleted.

** * * January 1, 1993, and January 1, 1995, Increase in Fees for Rice Inspection Services*

The interim rule included fee increases that are to be effective January 1, 1993, and January 1, 1995, respectively. The rule also stated that FGIS would review its cost, revenue and operating reserve levels to assure that the fee increases scheduled for January 1, 1993 and 1995, respectively, were required at the levels specified to maintain quality rice inspection services upon request.

FGIS has reviewed its cost, revenue and operating reserve levels to assure that the fee increases scheduled for January 1, 1993, and 1995, respectively, are required at the levels specified and are sufficient to maintain quality rice inspection services upon request.

FGIS has determined that revenue of $2,870,010 for Fiscal Year 1992 did not cover operating costs of $3,346,899 resulting in a negative margin of $476,889. Although FGIS reduced its costs by $125,677 when compared to Fiscal Year 1991, revenue decreased by $177,239. Clearly, the increase is required. Therefore, FGIS believes that the fee schedule, for January 1, 1993 and 1995, respectively, is needed.

Accordingly, the interim ruling amending 7 CFR part 78 which was published at 56 FR 15483 on April 17, 1991, is adopted as a final rule without change.

List of Subjects in 7 CFR Part 68

Administrative practice and procedure, Agriculture commodities.

For the reasons set out in the preamble, 7 CFR part 68 has been revised as follows:

PART 68—REGULATIONS AND STANDARDS FOR INSPECTION AND CERTIFICATION OF CERTAIN AGRICULTURE COMMODITIES AND THEIR PRODUCTS

1. The authority citation for part 68 continues to read as follows:

Authority: Sec. 202–208, 60 Stat. 1087, as amended (7 U.S.C. 1621 *et seq.*).

2. Accordingly, the interim final rule revising sections 68.90 and 68.91 which was published on April 17, 1991 (56 FR 15483), is adopted as a final rule without change.

Dated: November 23, 1992.

David R. Galliart,

Acting Administrator.

[FR Doc. 92–30508 Filed 12–16–92; 8:45 am]

BILLING CODE 3410–EN–M

Agricultural Marketing Service

7 CFR Part 907

[Navel Orange Regulation 740, Amdt. 1]

Navel Oranges Grown in Arizona and Designated Part of California

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends Navel Orange Regulation 740 by increasing the quantity of California-Arizona navel oranges that may be shipped to domestic markets during the period from December 11 through December 17, 1992. Consistent with program objectives, such action is needed to establish and maintain orderly marketing conditions for fresh California-Arizona navel oranges for the specified week. This action was recommended by the Navel Orange Administrative Committee (Committee), which is responsible for local administration of the navel orange marketing order.

EFFECTIVE DATE: Regulation 740, Amendment 1, (7 CFR 907.1040) is effective for the period from December 11 through December 17, 1992.

FOR FURTHER INFORMATION CONTACT: Christian D. Nissen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, room 2523–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–5127; or Robert Curry, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, 2202 Monterey Street, suite 102B, Fresno, California, 93721; telephone: (209) 487–5901.

SUPPLEMENTARY INFORMATION: This amendment is issued under Marketing Order No. 907 (7 CFR part 907), as amended, regulating the handling of navel oranges grown in Arizona and designated part of California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended, hereinafter referred to as the "Act."

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

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of the use of volume regulations on small entities as well as larger ones.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially

small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 130 handlers of California-Arizona navel oranges subject to regulation under the navel orange marketing order and approximately 4,000 navel orange producers in California and Arizona. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona navel oranges may be classified as small entities.

The California-Arizona navel orange industry is characterized by a large number of growers located over a wide area. The production area is divided into four districts which span Arizona and part of California. The largest proportion of navel orange production is located in District 1, Central California, which represented about 85 percent of the total production in 1991–92. District 2 is located in the southern coastal area of California and represented about 13 percent of 1991–92 production; District 3 is the desert area of California and Arizona, and it represented slightly less than 2 percent; and District 4, which represented less than 1 percent, is northern California.

The Committee conducted a telephone vote on December 10, 1992, to consider the current and prospective conditions of supply and demand and recommended, with nine members voting in favor, one opposing, and one abstaining, an amendment to Navel Orange Regulation 740 to increase the total allotment for Districts 1 and 3 from 1,900,000 cartons to 2,100,000 cartons for the week ending on December 17, 1992.

A Committee member reported that there are substantially more request and bookings than were anticipated at the Committee's meeting on December 8. Several members commented that demand is very strong and that the market is holding firm. Two members expressed that the industry should take advantage of this increased demand. Thus, the majority of Committee members favored increasing the allotment for the week ending on December 17, 1992, by 200,000 cartons, while one Committee member favored open movement at this time.

The Department reviewed the Committee's recommendation in light of the Committee's projections as set forth in its 1992–93 marketing policy, the December 8 revised shipping schedule, information provided during the telephone vote, and as previously established in Naval Orange Regulation 740. The recommended amount of 2,100,000 cartons is 200,000 cartons above the amount specified in the Committee's revised shipping schedule. Of the 2,100,000 cartons, 94.7 percent or 1,989,000 cartons are allotted for District 1, and 5.3 percent or 111,000 cartons are allotted for District 3. Handlers in Districts 2 and 4 will not be regulated as they are not shipping a sufficient quantity of navel oranges to warrant volume regulation at this time.

During the week ending on December 3, 1992, shipments of navel oranges to fresh domestic markets, including Canada, totaled 1,547,000 cartons, compared with 1,595,000 cartons shipped during the week ending on December 5, 1991. Export shipments totaled 154,000 cartons, compared with 183,000 cartons shipped during the week ending on December 5, 1991. Processing and other uses accounted for 391,000 cartons, compared with 263,000 cartons shipped during the week ending on December 5, 1991.

Fresh domestic shipments to date this season total 7,932,000 cartons, compared with 4,333,000 cartons shipped by this time last season. Export shipments total 540,000 cartons, compared with 682,000 cartons shipped by this time last season. Processing and other use shipments total 2,542,000 cartons, compared with 909,000 cartons shipped by this time last season.

For the week ending December 3, regulated shipments of navel oranges to the fresh domestic market were 1,509,000 cartons on an adjusted allotment of 1,453,000 cartons, which resulted in net overshipments of about 56,000 cartons. Regulated general maturity shipments for the week (December 4 through December 10, 1992) are estimated at 1,800,000 cartons on an adjusted allotment of 1,671,000 cartons. Thus, overshipments of about 129,000 cartons could be carried forward into the week ending on December 17, 1992.

The average f.o.b. shipping point price for the week ending on December 3, 1992, was $7.42 per carton based on a reported sales volume of 1,099,000 cartons. The season average f.o.b. shipping point price to date is $8.14 per carton. The average f.o.b. shipping point price for the week ending on December 5, 1991, was $9.85 per carton; the season average f.o.b. shipping point price at this time last year was $10.70.

The Department's Market News Service reported that, as of December 10, demand for choice California-Arizona navel oranges exceeds available supplies, and demand is very good for all others. The market was reported as about steady. Most present shipments are from prior bookings.

According to the National Agricultural Statistics Service, the 1991–92 season average fresh equivalent on-tree price for California-Arizona navel oranges was $5.29 per carton, 71 percent of the season average parity equivalent price of $7.43 per carton. Based upon fresh utilization levels indicated by the Committee and an econometric model developed by the Department, the 1992–93 season average fresh on-tree price is estimated at $3.49 per carton, about 45 percent of the estimated fresh on-tree parity equivalent price of $7.83 per carton.

Increasing the quantity of navel oranges that may be shipped during the period from December 11 through December 17, 1992, would be consistent with the provisions of the marketing order by tending to establish and maintain, in the interest of producers and consumers, an orderly flow of navel oranges to market.

Based on considerations of supply and market conditions, and the evaluation of alternatives to the implementation of this volume regulation, the Administrator of the AMS has determined that this final rule will not have a significant economic impact on a substantial number of small entities and that this action will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is further found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register**. This is because there is insufficient time between the date of the final recommendation of the Committee based on the latest marketing information (December 10), and the effective date necessary to effectuate the declared policy of the Act.

This final rule amends Navel Orange Regulation 740 by increasing the total allotment for Districts 1 and 3 from 1,900,000 cartons to 2,100,000 cartons for the week ending on December 17, 1992. It is necessary, therefore, in order to effectuate the declared purposes of the Act, to make this regulatory provision effective as specified.

List of Subjects in 7 CFR Part 907

Marketing agreements, Oranges, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 907 is amended as follows:

PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

1. The authority citation for 7 CFR part 907 continues to read as follows:

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

2. Section 907.1040 is amended to read as follows:

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

§ 907.1040 Navel Orange Regulation 740.

The quantity of navel oranges grown in California and Arizona which may be handled during the period from December 11 through December 17, 1992, is established as follows:

District 1	District 2	District 3	District 4	Total
Cartons/% (000)	Cartons/% (000)	Cartons/% (000)	Cartons/% (000)	Cartons (000)
1,989/94 7	Open	111/5.3	Open	2,100

Dated: December 14, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92–30693 Filed 12–15–92; 11:01 am]

BILLING CODE 3410–02–M

Farmers Home Administration

7 CFR Parts 1930, 1944, 1951 and 1965

RIN 0575–AA60

Farm Labor Housing Loan and Grant Program, Loan Agreement and Income Eligibility for Domestic Farm Laborers

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) hereby amends its Farm Labor Housing Loan and Grant Regulations. This action changes the basic rules of the Labor Housing Regulations affecting present and future borrowers and current and future tenants, the FmHA field staff, and housing managers concerning unauthorized rents, income eligibility, occupancy of labor housing, delegation of authority, verification of income, and verification of income from farm labor. These changes are made as a result of public comments received from the proposed rule published October 1, 1990, and Agency agreements with the Inspector General and are determined to be in the best interest of labor housing borrowers and grantees, tenant farm workers and their families, and the government.

Also, included in this change is consideration of comments received from the proposed rule published April 13, 1989, concerning retired and disabled farm workers, the definition of eligible farm labor, and the occupancy of section 514/516 (Labor Housing) by section 515 (Rural Rental Housing) eligible tenants. The final rule published June 21, 1991, did not address the issue of "substantial portion of income." The comments received at that time concerning "substantial portion of income" were considered in this final rule which does make changes to the definition for "substantial portion of income".

EFFECTIVE DATE: January 19, 1993.

FOR FURTHER INFORMATION CONTACT: Tom Sanders, Senior Loan Officer, Special Authorities Branch, Multi-family Housing Processing Division, FmHA, USDA, Washington, DC 20250, Telephone (202) 720–1606 (This is not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information requirements contained in this regulation have been submitted to the Office of Management and Budget for an expedited twenty-one (21) day clearance under section 3504(h) of the Paperwork Reduction Act of 1980. Public reporting burden for this collection of information is estimated to vary from 5 minutes to 150 hours per response, with an average of 11 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 this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, room 404-W, Washington, DC 20250; and to the Office of Management and Budget, Attention: Desk Officer for the Farmers Home Administration, Washington, DC 20503.

Classification

This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1 which implements Executive Order 12291, and has been determined "Non major." It will not 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 governments, 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.

Background/Discussion

On October 1, 1990, Farmers Home Administration published a proposed rule (55 FR 39982) to amend subpart D of part 1944, "Farm Labor Housing Loan and Grant Policies, Procedures and Authorizations," subpart C of part 1930, "Management and Supervision of Multiple Family Housing Borrowers and Grant Recipients." The proposed rule invited comments for 60 days ending November 30, 1990. The purpose of the revisions is to correct inequities in the regulations as identified by audit findings by the Office of Inspector General and agreed to by FmHA.

In order to correct inequities in the regulations, it was necessary to revise language in the definition of "substantial portion of income" and it was an opportunity to use the comments concerning farm worker "income" from the proposed rule published April 13, 1989 (54 FR 14822).

The intended effect of the revisions is to define the difference in tenant reporting between employer provided (farmer owned) housing and nonprofit sponsored housing. These revisions define the Agency's expectations of the farmer with no additional burden on reporting. Likewise, for nonprofit sponsors there is no increase in the public reporting burden. The changes simply clarify the Agency's position. The result of this rulemaking is to clearly state at loan and/or grant closing the reporting expectations of the government for housing financed and provided by the employer. Additional

management guidance on rents and rent structure for income ineligible farm workers is also provided.

Discussion of Comments

Nine letters were received commenting on the various aspects on the changes proposed in the October 1, 1990, proposed rule making. Eight letters were received within the comment period and one letter was received 5 days after closing of the comment period. The letters were generally supportive of the Agency's policies and direction. An overall fairness issue was raised by some respondents regarding the difference in treatment for income verification between farmworkers residing in farmer-owned housing and those in nonprofit-sponsored housing. For the reader's information, with the exception of the Labor Housing programs, FmHA program eligibility is primarily a function of income, which we require to be verified. However, eligibility for labor housing requires an additional verification—that the source of income is from farm labor.

In this final rule there is no requirement placed on the provider (the farmer) of on-farm housing to report and verify income of the farm worker. These loans are made to farmers because of a need for farm labor. Therefore, farm worker occupancy of on-farm housing is rent free and is associated with having to live on the farm.

A discussion of the major issues follows:

1. The Verification of Income Requirement Is Not Fair to Farm Workers Living "Off-Farm"

Three respondents stated we are creating a separate class of farmworker by not requiring from the farmer income verification reports on farm workers in their employment and receiving benefit of employer (farmer) provided housing.

All farmworkers, both on-farm and off-farm, must earn a substantial portion of income from eligible farm labor in order to benefit from this program. However, a difference exists in the area of income eligibility between the sections 514 loans and 516 grants in the Housing Act of 1949. Section 514 loans simply require that a substantial portion of income be earned from eligible farm labor. Section 516 requires additionally that the occupant meet low income eligibility requirements. When Rental Assistance (RA) is provided to supplement shelter costs of farmworkers, the RA is restricted to housing owned by nonprofit organizations and is further restricted to those farmworkers with very-low or low income.

With this rule, it is the Agency's portion to strengthen the farmer (employer) reporting requirements to the Agency. The farmworker is eligible to reside in an off-farm unit provided an employment contract exists between the farmer and the farmworker. The farmer is required to report their housing occupant. Since there is no rent being paid, nor any low or moderate income mandate for section 514 loans, income verification is not needed.

In contrast, nonprofit organizations must rent to any person attesting to being a low income farmworker. As a result, farmworkers residing in nonprofit sponsored labor housing must provide verification of both source and total amount of income for determining housing eligibility. This strict verification is necessary to comply with the statutory program requirements associated with direct rental subsidy to farmworkers for shelter costs.

2. Rent Procedures for Income Ineligible Farm Workers

Eight of the nine respondents had comments on various aspects of this issue.

One respondent indicated this change did not make the distinction clear enough between on-farm and off-farm and the use of the rent procedures. We disagree; there are no distinctions to be made on rent procedures for farm workers. The FmHA must approve all rent changes for off-farm housing. This also applies to on-farm housing if rent is collected and includes on-farm units where there has previously been no rent charged. The rule now outlines the Agency's rent computation and disposition of rental income policies.

Two respondents objected to the Agency permitting above-moderate income farm laborers to occupy labor housing because there will be no incentive for project managers to market and seek income eligible farmworkers. These objections were based on a concurrent proposal to permit project managers, with FmHA approval, to retain rental income in excess of the basic rents for operating and maintenance purposes, and reserves. We agree it is inappropriate to permit the continued occupancy of above-moderate-income farm workers when there are income eligible farm workers on the waiting list for off-farm projects operating in accordance with § 1944.176(c)(6) of subpart D of part 1944. However, we do not agree that we should impose an absolute ban on all above-moderate-income residents. The modified rule should enhance the economic viability of the project by permitting occupancy by above moderate residents only when income eligible farmworkers are not available. We believe this position is more appropriate than an arbitrary rule that could create vacancies. Above-moderate-income farmworker households residing in off-farm housing projects may be required to move, with either a 7 or 30 day notice as the circumstances dictate in Exhibit B of subpart C of part 1930, if eligible farmworkers are approved for housing.

Four respondents supported the change for a higher shelter cost of up to 30 percent of household income or a market oriented rent. The proposed rule allowed for charging "* * * the lesser of the required shelter cost contribution set out in paragraph II [RR] or the prevailing rental rates for the area, * * *" However, the comments also cautioned that we should provide a formula for the computation of the rent rather than leave it up to the field staff to determine the prevailing rental rates for the area.

We agree that added guidance is needed. The Agency has adopted the recommendations to provide a formula and revised the rule to require excess to rents to be applied to the borrower's loan account.

3. Substantial Portion of Income

Three respondents commented on this definition. Two pertained to editorial consistency concerning the use of the terms "farm worker income" or "household income" or "adjusted annual income" and confusion between "certification of farm work" and "verification of income from farm work." We resolved the concerns by using "adjusted annual income" and "verification of income from farm work" throughout.

Only one respondent to this proposed rule recommended that we raise the substantial portion of income limits that are shown in Exhibit J of subpart D of part 1944. Exhibit J is a reference exhibit used in the definition for substantial portion of income. We combined this comment with those on "substantial portion of income" from the proposed rule published April 13, 1989 (54 FR 14822).

The two positions being taken are:

1. The percentages used to set a floor for minimum farm work income necessary for housing eligibility discriminates against the local seasonal and year round farmworker. (For the reader's information, the dollar minimum income to be earned varies by region. The threshold for housing eligibility for migrant farmworkers is

that at least 50 percent of their annual income must be from farm work. The threshold for local seasonal and year round farmworkers is 65 percent.), or;

2. The income limits set out in Exhibit J of this subpart are "too low" or "too high". The "too high" comment is from agricultural areas that have experienced a decline in farm work due to weather related disaster.

The "too low" comment is from agricultural areas where a high wage is earned and the minimum dollar amount can be earned in a short time. In this circumstance the farmworker has been known to switch to less strenuous work, while remaining within our income limits, and retaining housing eligibility.

While these comments reflect a concern for housing of the farmworker and housing management concerns of the respondents, they reflect anecdotal information relating to specific cases. To make a change based on anecdotal information, without thorough review and analysis of farmworkers income by state and region, and a public comment period would do more harm than good. The current definition of "substantial portion of income" used in conjunction with Exhibit J is a method that works and there is other administrative authority in Agency procedures to accommodate most situations that arise affecting a farmworker's housing eligibility.

Accordingly, we do not believe there is sufficient justification to warrant a change to the "substantial portion of income" definition or Exhibit J at this time.

3. Loan Agreement (LH Insured Loan to Farm Borrowers To Provide Housing for the Farm Borrower's Farming Operations)

There were three responses to the use of this new agreement. One respondent questioned the use of the term "certification" in lieu of verification of income from farm work. One respondent favored the use of the loan agreement. One respondent recommended we revise the loan agreement to require the same reporting of income for on-farm tenants as required for off-farm tenants. While we have adopted the editorial recommendations concerning the verification of income from farm work, the recommendation concerning the inclusion of reporting income in the loan agreement has not been adopted. It would be inconsistent with our previously stated position concerning the reporting of farmworker income by the farm borrower.

During the drafting of this final rule and review of the Loan Agreement, several other points were raised. One concerned the permissive approach for fees charged (Paragraph B item 2 of the proposed loan agreement) by the farmer for damage deposits or cleaning fees without the Agency's prior approval. The exception language for damage deposits or cleaning fees was deleted from item 2 and added to item 3 as fees that require prior agency approval. It is the agency's experience in rental housing that the use of damage deposits and cleaning fees will give the tenants a sense of responsibility and well being for their housing.

While we have changed our position on damage deposits and cleaning fees within the loan agreement, we will not discourage the use of these fees when justified in the management of on-farm housing.

The second point raised was how to obtain third party verification of farm labor and rent free housing in circumstances where we are not verifying and reporting income. It was decided that FmHA will require farm borrowers to have the farmworker tenants sign a form verifying rent free housing as a condition of farm labor employment. As a result, we have designed a form (Exhibit K–1) that gives us tenant verification of rent free housing, verification of farm labor, and is the attachment to the farm borrower's annual report.

This form is to be completed for the borrower by the tenant when the tenant moves into the housing. The tenant will keep a copy, one copy will be mailed to the designated FmHA Office, and one copy will be retained by the borrower. The borrower will submit this form(s) each year with the annual report. If the housing is operated on a seasonal basis, then a form will be needed for each of the last occupants when the housing is closed for the season for the annual report.

Accordingly with the supplementary reporting requirement for occupancy, additional procedural changes were necessary to clarify the forms use and Agency policy. Two paragraphs (d) and (e) were added in this final rule to § 1944.154 Priorities for tenants' occupancy current procedure, that were not in the proposed rule.

However, we will expect the farmer to maintain a file for these verification(s) of current occupants for yearround housing or the last occupants for seasonally operated housing. The verification(s) should be available for FmHA inspection for all current occupants regardless of season. We do not expect the verifications to be retained by the farm borrower after the annual report nor do we expect verifications to be retained for interim seasonal occupancy.

The use of the new form for the Verification of Farm Labor and Occupancy of Rent Free Housing shall be effective with the publication of this final rule.

Another point raised was the status of the borrower's loan when the Agency approves rent for the farm borrower. It is the Agency's position that the original loan purpose and the loan agreement be maintained for the life of the loan. When there is a request to rent normally non-rental units, the original loan agreement will be left in place and maximum use will be made of Agency servicing authorities.

The final point raised was retroactive execution of this new loan agreement. It has been decided that we will require notification of all existing farm borrowers within 90 days of the effective date of this rule of the new documentation for Labor Housing loans and seek loan agreements where previously none existed. However, we must emphasize that the Agency is not placing any additional reporting requirements or costs on the farm borrowers, but we are documenting that they have been notified of the program's intent, purpose, and reporting requirements. It is not our intent to place uncooperative borrowers in default, but it is our intent to establish a basis for future servicing action if required.

Accordingly, special servicing procedures for retroactive loan agreements were developed and included in § 1944.181 Loan Servicing in subpart D of part 1944. The paragraph was revised into 3 sub-paragraphs and were not in the proposed rule.

On a related issue, no comments were received disagreeing with eliminating the waiver authority of State Directors on loan agreements and making loan agreements mandatory for all labor housing loans.

4. Responsibility for Labor Housing Processing and Servicing

One comment was received concerning this change delegating processing and servicing exclusively to the District Office. Although this is an internal matter concerning delegation of duties, the OIG Audit indicated the delegation instruction was not clear to the field staff and resulted in confusion over whether the County or District Office staffs had the primary processing and servicing responsibilities. The normal functions currently being performed by the County Offices (processing, servicing, and collections) may remain in place based on the

delegation of authority by the District Director.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment and, in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an environmental impact statement is not required.

This program/activity is listed in the Catalog of Federal Domestic Assistance under numbers 10.405, Farm Labor Housing Loans and Grants, and 10.427, Rural Rental Assistance Payments (Rental Assistance), and are subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials (7 CFR part 3015, subpart V, 48 FR 29112, June 24, 1983).

The Administrator has determined that this final action will not have a significant economic impact on a substantial number of small entities because it contains normal business recordkeeping requirements and minimal essential reporting requirements. This action will effect labor housing borrowers, rents, and labor housing tenants with above-moderate-income.

Executive Order 12778

The proposed regulation has been reviewed in light of Executive Order 12778 and meets the applicable standards provided in sections 2(a) and (2)(b)(2) of that Order. Provisions within this part which are inconsistent with state law are controlling. All administrative remedies pursuant to 7 CFR part 1900 subpart B must be exhausted prior to filing suit.

List of Subjects

7 CFR Part 1930

Accounting, Administrative practice and procedure, Grant programs—Housing and community development, Loan programs—Housing and community development, Low and moderate income housing—Rental, and Reporting requirements.

7 CFR Part 1944

Farm labor housing, Migrant farmworkers, Nonprofit organizations, Public housing, Rent subsidies, and Rural housing.

7 CFR Part 1951

Loan programs—Agriculture and Rural areas.

7 CFR Part 1965

Real Property—Security servicing for multiple housing loans.

Therefore, chapter XVIII, title 7, Code of Federal Regulations is amended as follows:

PART 1930—GENERAL

1. The authority citation for part 1930 continues to read as follows:

Authority: 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23 and 2.70.

Subpart C—Management and Supervision of Multiple Family Housing Borrowers and Grant Recipients

2. Exhibit B of subpart C is amended by revising paragraphs VI.B.6.a.(5), VII C.1., and VII.C.2.; and by adding paragraph VI.B.6.A.(7) to read as follows:

Exhibits to Subpart C

Exhibit B—Multiple Housing Management Handbook

* * * * *

VI. Renting Procedure

* * * * *

B. * * *

6. * * *

a. * * *

(5) Tenants residing in RRH units who are ineligible, because their adjusted annual income exceeds the maximum for the RRH project, will be charged the FmHA approved Note Rate rental rate for the size of unit occupied in a Plan II RRH project. In projects operated under Plan I, ineligible tenants will be charged rental surcharge of 25 percent of the approved Note Rate rental rate.

* * * * *

(7) Tenants residing in off-farm LH units, who are ineligible because there adjusted annual income exceeds the maximum for the area will be charged the lesser of the required shelter cost contribution set out in paragraph II RR of this exhibit or the prevailing market rent rate for the project as determined by subpart D of part 1944 of this chapter. For on-farm tenants, rent determination may be subject to local discretion with limitations is set out in subpart D of part 1944 of this chapter. Excess rent shall be remitted to the Agency for credit to the Rural Housing Insurance Fund.

* * * * *

VII. Verification and Certification of Tenant or Member Income and/or Employment

* * * * *

C. * * *

1. *Verification of Income from all sources.* Income verification is required for domestic farm laborers, including migrant farmworkers, except in instances where housing is provided rent free on a farm as part of employment compensation for farm labor. When the tenants do not have easily verifiable income, the borrower may project income expected to be received by the tenants during occupancy for determining eligibility and subsidy assistance.

2. *Farm Labor employment verification.* Farm work verification is required for all domestic farm laborers, including migrant farmworkers, and all off-farm LH tenants must have sufficient income from employment that meets the definition of domestic farm labor. Employment verification is in addition to income verification for those tenants described in paragraph VII.C.1. of this exhibit. Verification must be documented and filed in the "Tenant Record File" or in the borrower loan docket.

* * * * *

2A. In Exhibit B of this subpart, paragraph VII D is amended in the third sentence by changing the reference "paragraph VI S" to "paragraph VI G".

PART 1944—HOUSING

3. The authority citation for part 1944 continues to read as follows:

Authority: 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23 and 2.70.

Subpart D—Farm Labor Housing Loan and Grant Policies, Procedures and Authorizations

4. Section 1944.153 is amended by revising the definition of "Substantial portion of income" to read as follows:

§ 1944.153 Definitions.

* * * * *

Substantial portion of income. That portion of income received which has been derived from farm labor performed by a farm laborer as defined in this section.

(1) To determine if income is considered substantial, the measure to be used will be:

(i) For housing rented to farm laborers and owned by public bodies and public or private nonprofit organizations when charging rent:

(A) Actual dollars earned from farm labor by domestic farm laborers other than migrant farmworkers must equal at least 65 percent of the annual income limits indicated for the Standard Federal regions, as shown in Exhibit J of this subpart (which is available in any FmHA office). For migrant farmworkers living in seasonal housing the actual dollars earned from farm labor by a domestic farm laborer must equal at least 50 percent of annual limits as shown in Exhibit J of this subpart.

(B) An alternate measure for determining substantial portion of income when actual earnings are not available may be the duration of time a farm laborer worked on a farm as a domestic farm worker during the preceding 12 months. In order to be considered as substantial the farm

laborer must have worked at least 110 whole days in farm work. For purposes of this section one whole day is the equivalent of at least 7 hours. When using a period of more than one year, a yearly average amounting to at least 110 days per year must be computed.

(ii) For housing owned by a farmer, family farm partnership, family farm corporation, or an association of farmers which was initially provided on a nonrental basis, substantial portion of income is earned down housing is provided by the owner as part of employment compensation for farm labor.

(2) When a natural disaster has occurred, such as a drought, flood, freeze, etc., figures for the last full year of work will be used to determine substantial portion of income under paragraph (1) of this definition.

(3) The tenant who qualifies as a domestic farm laborer in order to reside or continue to reside in any project with a nonrestrictive farm labor clause in the mortgage covenants (see § 1944.176(d)(5) of this subpart) must not have adjusted annual income which exceeds the moderate income limit as shown in Exhibit C of subpart A of part 1944 of this chapter (which is available in any FmHA office), for the appropriate household size and appropriate geographical area. Tenants residing in housing which was initially rent free without the non-restrictive labor clause in the mortgage covenants (i.e. on-farm site projects where the tenant must work for the farm owner) need not certify income (see paragraph (1)(ii) of this definition), and need not be low or moderate income tenants in order to be eligible to occupy a unit.

(i) Income and exempted income for purposes of this subpart are defined in paragraph II A, B, and C of Exhibit B of subpart C of part 1930 of this chapter.

(ii) For servicing purposes, an exception to the moderate income rule is permitted in accordance with paragraph VI of Exhibit B of subpart C of part 1930 of this chapter.

* * * * *

5. Section 1944.154 is amended by adding paragraphs (d) and (e) to read as follows:

§ 1944.154 Priorities for tenants' occupancy.

* * * * *

(d) *Tenant Occupancy records.* (1) For tenants of housing owned by farm borrowers, rent is not charged and employment related occupancy restrictions do apply (reference § 1944.164(h) for additional guidance). The borrower shall have each tenant execute a verification of occupancy and farm labor on Exhibit K–1, Verification of Domestic Farm Labor and Occupancy in Rent Free Housing, on initial occupancy of the dwelling unit. The borrower shall retain the properly completed forms and make them available for FmHA Inspection only for the current tenant(s) and to supplement the annual reporting requirements required in the loan agreement. If the housing is not occupied on a year-round basis, then the report should list the names of the migrants or seasonal farmworkers attached to Exhibit K–1.

(2) For tenants of housing when rent is charged and employment restrictions do not apply (reference § 1944.164(h) for additional guidance). The borrower shall be guided by the procedures referenced in paragraph (c) of this section.

(e) *Ineligible occupants.* (1) For housing owned by farm borrowers. Ineligible occupants are immediate relatives of the borrower(s) and anyone who is not employed in domestic farm labor, as defined in § 1944.153 of this subpart. Normally, occupancy of labor housing owned by farm borrowers is restricted to employees of the farmer or is governed by an employment contract with the farmer. Occupancy of housing owned by farm borrowers, regardless of the site (on-farm or in town), may be occupied by ineligibles with the permission of the State Director.

(2) *For housing owned by organizations.* Ineligible occupants are defined in Exhibit B of subpart C of part 1930 of this chapter.

6. Section 1944.155 is revised to read as follows:

§ 1944.155 Responsibility for LH processing and servicing.

All LH loan and/or LH grant application processing and servicing is the responsibility of the FmHA District Director with redelegation authority for on-farm labor housing loans.

7. Section 1944.164 is amended by revising paragraph (g)(2) to read as follows:

§ 1944.164 Limitations and conditions.

* * * * *

(g) * * *

(2) All other loan applicants of this subpart will execute a loan agreement in substantially the same format as Exhibit D of this subpart (for rental units) or Exhibit K of this subpart (for non-rental units). Any necessary changes must be approved by OGC.

* * * * *

8. Section 1944.164(o) is amended in the second sentence by revising the reference "§ 1944.176(c)(2)" to "§ 1944.176(d)(2)".

9. Section 1944.164 (p) is amended by revising the reference "§ 1944.176(c)(2)" to "§ 1944.176 (d)(2)."

10. Section 1944.176 is amended by redesignating current paragraphs (c), (d), (e) and (f) as paragraphs (d), (e), (f) and (g) respectively; by removing newly redesignated paragraph (d)(5) and redesignating paragraphs (d) (6) and (7) as (d) (5) and (6); and by adding new paragraph (c) to read as follows:

§ 1944.176 Loan and/or grant closing.

* * * * *

(c) *LH loan agreement.* A LH loan agreement, prepared and authorized as provided in § 1944.164 (g) of this subpart will be dated and executed by the applicant on the date of loan approval. The executed agreement will be filed with the mortgage or other security instrument in the District Office case file.

* * * * *

11. Section 1944.181 is revised to read as follows:

§ 1944.181 Loan Servicing.

(a) For general purposes, LH loans and grants will be serviced in accordance with this subpart B of part 1924, subpart C of part 1930, and subpart D of part 1944 of this chapter. Requests for rent increases will be processed in accordance with Exhibit C of subpart C of part 1930 of this chapter for nonprofit organizations.

(b) For special servicing of LH loans when the Loan Agreement was waived. There will be many instances where the loan agreement was waived because of a loan agreement waiver provision in this regulation that was in effect for more than 10 years. As a result of regulation change, the State Director shall notify all LH loan farm borrowers within 180 days of the effective date of this regulation, that such labor housing borrowers will be:

(1) Requested to sign a loan agreement;

(2) Required to report tenant occupancy, at least annually (reference Exhibit K–1 of this subpart); and

(3) Provided with Exhibit K–1 of this subpart.

(i) The above action need not be completed: If there is existing servicing action where a management agreement exists and such agreement is sufficient to satisfy the notification items, or; If there is a pre-existing loan agreement, and paragraphs (b) (2) and (3) of this section are addressed. If the existing loan agreement does not include annual occupancy reporting, then the borrower must be notified in accordance with paragraphs (b) (2) and (3) of this section.

(ii) Refusal of the borrower to participate in the regulatory change should be documented. It shall be the responsibility of the State Director to determine if compliance reviews should be increased from the minimum required by procedure. Additional servicing guidance may be found in subpart N of part 1951 and subpart B (with special emphasis on Exhibit F) of part 1965 of this chapter.

(c) All special servicing needs for LH loans to farm borrowers should be incorporated in a management agreement in addition to a loan agreement. Examples of special servicing needs are: When the housing is temporarily not needed for farm laborers; When rent is being charged; When occupied by ineligibles, or; When farmers share housing costs with the borrower in exchange for the occupant(s) labor. The use of a management agreement is not limited to the examples cited. Whenever the management agreement is for a purpose unrelated to agriculture, the farmer should understand that the housing should be returned to the original loan purpose as soon as practical. A final consideration in loan servicing should be to sell the Labor Housing outside of the program when the farmer can no longer use the housing in his farming operation.

11A. Section 1944.200 is added to read as follows:

§ 1944.200 OMB Control Number.

The reporting and recordkeeping requirements contained in this regulation have been approved by the Office of Management and Budget and have been assigned OMB control number 0575–0045. Public reporting burden for this collection of information is estimated to vary from 5 minutes to 150 hours per response, with an average of 11 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 this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, room 404–W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB# 0575–0045), Washington, DC 20503.

12. Exhibit K of subpart D is added and reads as follows:

Exhibits to Subpart D

Exhibit K

LOAN AGREEMENT

(LH Insured Loan to Farm Borrowers to Provide Housing for the Farm Borrower's Farming Operations)

A. General provisions:

1. This agreement is entered into _____(Date).

2. This agreement is between _____

_____

_____

(borrower's name whether one or more), whose mailing address is

_____

_____

_____, and the United States of America, acting through the Farmers Home Administration, United States Department of Agriculture (the Government).

3. This agreement is made in return for receiving Labor Housing (LH) loan assistance from the Government totaling $_____as evidenced by a Promissory Note dated _____. This assistance is made with the understanding that housing is to be provided to Domestic Farm Laborers on a rent free basis. Any rents collected without the written consent of the Government are the responsibility of the borrower and shall be refunded by the borrower to the tenants.

4. The borrower agrees to comply with Government regulations governing the LH loan program.

5. This agreement is in addition to any other agreements entered into with the Government, such as any promissory note, mortgage or deed of trust, loan approval requirements, etc.

B. Rent and Occupancy.

Occupancy of the housing will be limited to domestic farmworkers or migrant farmworkers as defined by the Government, unless the Government gives prior written approval for other occupancy, except that in no case will a member of the borrower's immediate family occupy the housing.

The borrower agrees:

1. To meet the LH loan objectives by providing decent, safe, and sanitary housing for eligible tenants;

2. To provide the housing rent free to eligible farmworker tenants;

3. To get the Government's prior approval before collecting utility charges (i.e. electricity, fuel, water, waste disposal, etc.) or requiring a refundable damage deposit or cleaning fee from tenants;

4. To get the Government's prior approval if there is a need to permit occupancy by tenants who are not working in the borrower's farming operation or not normally eligible to occupy the housing unit; and

5. To get the Government's prior approval if there is a need to charge rent to tenants or change any existing rents. To provide a management plan, which meets requirements set out in Government regulations, whenever rents are charged to tenants. The management plan will describe how the housing operation will be conducted.

C. Recordkeeping.

The borrower agrees:

1. To provide the Government financial information as required by Government regulations;

2. To provide annual verification of employment of eligible tenants as occupancy changes, not less than once per year; and

3. To keep information required by Government regulations and make the information available for Government inspection, to include tenant nonrent affidavits.

D. Compliance with Federal, State, and Local Laws and Regulations.

The borrower agrees to comply with applicable Federal, State, and local laws and regulations, including but not limited to, the following:

1. To provide equal housing opportunities to tenants;

2. To operate the housing in a safe environment;

3. To maintain comprehensive property insurance on the property taken as security;

4. To pay taxes and assessments on the property taken as security; and

5. To make the security property available for inspection by the Government.

E. Disposition of LH Security Property.

The borrower agrees:

1. Not to sell or otherwise dispose of property taken as security for the LH loan without the Government's prior written approval;

2. Not to sell or enter into any business arrangement which may potentially or actually place the housing operation under the management or control of another party without the prior approval of the Government; and

3. To prohibit any liens to be taken on the security property without the prior approval of the Government.

F. Enforcement Considerations.

The borrower understands that any violation of the terms of this agreement may enable the Government to declare the note immediately due and payable and may adversely affect the borrower's ability to obtain other Government loans or grants.

G. General Provisions.

This agreement may be cited in the security instrument and other instruments or agreements as the "Loan Agreement of _____19__." (date of this instrument)

H. Signature(s).

_____

Signature of Borrower

_____

Witness

_____

Signature of Borrower

_____

Witness

13. Exhibit K–1 of subpart D is added and read as follows:

Exhibit K–1

Date _____

SUBJECT: Verification of Domestic Farm Labor and Occupancy in Rent Free Housing

_____

_____

(borrower's name or the farm's business name)

On_____, __, I/We became the occupant(s) of the rent free dwelling owned by the above named borrower. The dwelling is provided as a condition of my farm labor employment.

If the rent free status changes, I/we will notify the Farmers Home Administration at:

_____Office
_____Phone number
_____
_____
_____, occupant
_____
_____

Distribution:

Original to occupant.

1 copy for borrower's records to be kept available for inspection upon request by Farmers Home Administration for all current tenants.

14. Exhibit M of Subpart D is added and reads as follows:

Exhibit M

Market Rent Determination for Labor Housing Projects

I. *Objective.* The objective of this exhibit is to provide guidance for a market rent determination for Labor Housing (LH) when the farmworker is not required to live on the farm (§ 1944.176(d)(5) of this subpart) or when it is necessary to determine a rent for farmer owned housing.

II. *Purpose.* When an eligible farmworker becomes ineligible because of above-moderate-income and has been granted permission to continue residing in the unit in accordance with paragraph VI B 5 or 6 of Exhibit B of subpart C of part 1930 of this chapter, then an appropriate rent must be formulated that must not exceed the market rent for the local area as determined in accordance with the provisions set out in this exhibit.

III. *Determination.* Whenever a market rent determination is required for one or more LH resident(s), the market rent will be computed by using the most recently approved Form FmHA 1930–7, "Statement of Budget and Cash Flow," and substituting a new debt service computation based on the project's development cost. The amortization factor for the Farm Labor Housing-State Director Exception interest rate as published in FmHA Instruction 440.1 (available in any FmHA office) will be used with a 33 year term. The rate used for amortization for debt service in the market rent budget should be rounded down to the nearest eighth of a percent. For example, 9.95 percent would be rounded to 9.875. The market rent is computed on a basis of the project's initial development cost and subsequent loans and grants. In contrast, the "basic" rent debt service is computed 1 percent loans offset by the construction grants.

The market rent determination, one set, will remain in place for the project; therefore, the determination must be recorded in a narrative statement which must be filed with the Promissory Note.

IV. *Limitations.* If the market rent determined in the proceeding paragraph is found to exceed the conventional market rents in the area (within an approximate 48 kilometer or (30 mile) radius or the effective market area or other appropriate geographical or local boundary) by more than $20, then the LH market rent will be limited to the prevailing market rent. Prevailing market rents may be determined from such sources as recent Rural Rental Housing Market studies or recent area classified advertisements (within the last two months), documented, and adjusted for comparability. Documentation should be similar to the information found in Exhibit A–4 of this subpart, with the advertisements attached. The adjustment for comparability should consider unit size, bedroom mix, age, and amenities. This rental determination is not intended to survey housing used exclusively for farm labor rental housing, but to determine a fair conventional market rent for an above-moderate-income farmworker and family.

PART 1951—SERVICING AND COLLECTIONS

15. The authority citation for part 1951 continues to read as follows:

Authority: 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23 and 2.70.

Subpart F—Analyzing Credit Needs and Graduation of Borrowers

16. § 1951.261 (d)(3) is amended by revising the reference § 1944.176 (c)(2)" to "§ 1944.176 (d)(2)."

PART 1965—REAL PROPERTY

17. The authority citation for part 1965 continues to read as follows:

Authority: 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23 and 2.70.

Subpart B—Security Servicing for Multiple Housing Loans

18. § 1965.65 (g)(5) is amended by revising the reference "§ 1944.176 (c)(1)" to "§ 1944.176 (d)(1)."

Dated: October 9, 1992.

La Verne Ausman,

Administrator, Farmers Home Administration.

[FR Doc. 92–30394 Filed 12–16–92; 8:45 am]

BILLING CODE 3410–07–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 238

[INS No. 1376–92]

RIN 1115–AC24

Contracts With Transportation Lines; Signatory Authority

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with requests for comments.

SUMMARY: This interim rule amends 8 CFR part 238 by delegating signatory authority to enter into contracts under the purview of section 238 of the Immigration and Nationality Act (the Act) to the Executive Associate Commissioner for Operations. This change is necessary as a result of a reorganization which occurred within the Immigration and Naturalization Service (the Service). In addition, this rule amends the reference citations to conform with the appropriate paragraphs within section 238 of the Act.

DATES: This rule is effective December 17, 1992. Interested persons are invited to submit written comments on or before January 19, 1993.

ADDRESSES: Please submit written comments, in triplicate, to the Records Systems Division, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., room 5304, Washington, DC 20536. Please include INS number 1376–92 on your correspondence to ensure proper and timely handling.

FOR FURTHER INFORMATION CONTACT: Una Brien, Assistant Chief Inspector, Inspections Division, Immigration and Naturalization Service, 425 I Street, NW., room 7228, Washington, DC 20536, telephone (202) 514–2681.

SUPPLEMENTARY INFORMATION: Under the current regulations, the Regional Commissioners have signatory authority to enter into contracts under the purview of section 238 of the Act. As a result of a reorganization within the Service, a new position entitled "Executive Associate Commissioner for Operations" was established. The Executive Associate Commissioner for Operations is now responsible for the duties extant in the Enforcement and Examinations components of the Service, and related responsibilities that were formerly exercised by the Regional Commissioners. Therefore, this rule amends 8 CFR part 238 to reflect this change by transferring the signatory authority to enter into contracts under section 238 of the Act from the Regional Commissioners to the Executive Associate Commissioner for Operations. The Executive Associate Commissioner for Operations may designate an Immigration Officer to enter into contracts in his stead.

This rule also amends the reference citations contained in 8 CFR part 238 to correspond with the appropriate paragraphs within section 238 of the Act. These changes are necessitated by Immigration and Nationality Act Amendments of 1986, section 7, Public

Law 99–653, dated November 14, 1986, which repealed subparagraph (a) of section 238 of the Act, and renumbered the remaining subparagraphs. Carriers listed in 8 CFR 238.2(b)(1) are no longer subject to agreements entered into on Form I–421 because subparagraph (a) of section 238 of the Act has been repealed and therefore the list of carriers has been removed from the regulations.

The Service's implementation of this rule as an interim rule, with provision for post-promulgation public comments, is based upon the "good cause" exception found at 5 U.S.C. 553(b)(A)–(B) and 553(d)(2)–(3). The reasons and the necessity for the immediate implementation of this interim rule are as follows: This rule relates to agency management and organization with respect to the reassigned responsibilities to the Executive Associate Commissioner for Operations. It also interprets the statutory changes made as a result of Public Law 99–653. A notice and comment period would have been impracticable and contrary to the public interest.

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This rule is not a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have Federalism implications warranting the preparation of a Federalism Assessment in accordance with E.O. 12612.

List of Subjects in 8 CFR Part 238

Administrative practice and procedures, Air carriers, Aliens, Government contracts, Travel.

Accordingly, part 238 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 238—CONTRACTS WITH TRANSPORTATION LINES

1. The authority citation for part 238 continues to read as follows:

Authority: 8 U.S.C. 1103, 1228, 8 CFR part 2.

2. Section 238.1 is revised to read as follows:

§ 238.1 Contracts.

The contracts with transportation lines referred to in section 238(a) of the Act may be entered into by the Executive Associate Commissioner for Operations, or by an Immigration Officer designated by the Executive Associate Commissioner for Operations on behalf of the government and shall be documented on Form I–420. The contracts with transportation lines referred to in section 238(c) of the Act shall be made by the Commissioner on behalf of the government and shall be documented on Form I–426. The contracts with transportation lines desiring their passengers to be preinspected at places outside the United States shall be made by the Commissioner on behalf of the government and shall be documented on Form I–425; except that contracts for irregularly operated charter flights may be entered into by the Executive Associate Commissioner for Operations or an Immigration Officer designated by the Executive Associate Commissioner for Operations and having jurisdiction over the location where the inspection will take place.

3. Section 238.2 is revised to read as follows:

§ 238.2 Transportation lines bringing aliens to the United States from or through foreign contiguous territory or adjacent islands.

Form I–420 shall be signed in duplicate and forwarded to the Headquarters Office of Inspections. After acceptance, each Regional Office of Inspections, the district office and the carrier will be furnished with one copy of the agreement. The transmittal letter to the Headquarters Office of Inspections shall indicate whether the signatory to the agreement is a subsidiary or affiliate of a line which has already signed a similar agreement. Correspondence regarding ancillary contracts for office space and other facilities to be furnished by transportation lines at Service stations in Canada shall be similarly handled.

Dated: November 19, 1992.

Gene McNary,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 92–30551 Filed 12–16–92; 8:45 am]

BILLING CODE 4410–10–M

DELAWARE RIVER BASIN COMMISSION

18 CFR Part 401

Amendment to Administrative Manual—Rules of Practice and Procedure

AGENCY: Delaware River Basin Commission.

ACTION: Final rule.

SUMMARY: At its December 9, 1992 business meeting the Delaware River Basin Commission amended its Administrative Manual—Rules of Practice and Procedure in relation to Commission review of electric generation and cogeneration projects.

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. Further, 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 has amended its Rules of Practice and Procedure by the addition of a new project review category 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.

EFFECTIVE DATE: December 9, 1992.

ADDRESSES: Copies of the Commission's Administrative Manual—Rules of Practice and Procedure are available from the 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.

SUPPLEMENTARY INFORMATION: The Commission held a public hearing on the proposed amendments on December 9, 1992 as noticed in the October 8, 1992 and December 3, 1992 issues of the **Federal Register** (Vol. 57, No. 196 page

46354 and Vol. 57, No. 233, page 57159). Based upon testimony received and further deliberation, the Commission has amended its 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.

18 CFR part 401 is amended as follows:

SUBCHAPTER A—ADMINISTRATIVE MANUAL

PART 401—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for part 401 continues to read as follows:

Authority: Delaware River Basin Compact, 75 Stat. 688.

2. Section 401.35(b)(17) is added to read as follows:

§ 401.35 Classification of projects for review under section 3.8 of the Compact.

(b) * * *

(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.

* * * * *

Dated: December 11, 1992.

Susan M. Weisman,

Secretary.

[FR Doc. 92-30604 Filed 12-16-92; 8:45 am]

BILLING CODE 6360-01-M

TENNESSEE VALLEY AUTHORITY

18 CFR Part 1301

Freedom of Information Act

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Final rule.

SUMMARY: The Tennessee Valley Authority is amending its Freedom of Information Act regulations to reflect administrative changes within TVA.

EFFECTIVE DATE: December 17, 1992.

FOR FURTHER INFORMATION CONTACT: Mark R. Winter, TVA, 1101 Market Street (MR 2F), Chattanooga, TN 37402-2801, telephone number: (615) 751-2523.

SUPPLEMENTARY INFORMATION: This rule was not published in proposed form since it relates to agency practice. Since this rule is nonsubstantive, it is being made effective immediately, December 17, 1992.

List of Subjects in 18 CFR Part 1301

Administrative practice and procedure, Freedom of Information, Privacy Act, Sunshine Act.

For the reasons set forth in the preamble, title 18, chapter XIII of the Code of Federal Regulations is amended as follows:

PART 1301—PROCEDURES

1. The authority citation for part 1301 continues to read as follows:

Authority: 16 U.S.C. 831-831dd, 5 U.S.C. 552.

2. Section 1301.1 is amended by revising the introductory text of paragraph (b) to read as follows:

§ 1301.1 Records.

* * * * *

(b) *Requests.* Requests to inspect and copy TVA records shall be directed to the TVA FOIA Officer, TVA Records and Information Management, Information Support Services, Tennessee Valley Authority, 400 Summit Hill Drive, Knoxville, TN 37902-1499. A request shall:

* * * * *

§ 1301.1 [Amended]

3. Section 1301.1 is amended by revising the second and third sentences of paragraph (c)(1)(i) to read as follows:

* * * * *

(c) * * *

(1) * * *

(i) * * * Initial determinations shall be made by the TVA FOIA Officer or the TVA FOIA Officer's designee. If the initial determination is not to comply with the request, the notice to the person making the request shall include a statement of the reasons for the denial of the request; a notice of the right of the person making the request to appeal the denial to the Vice President, Facilities Services, and the time limits therefor; and the name and job title of the person responsible for the initial determination.

* * * * *

§ 1301.1 [Amended]

4. Section 1301.1 is amended by revising the first sentence of paragraph (c)(1)(ii) to read as follows:

* * * * *

(c) * * *

(1) * * *

(ii) For the purposes of this paragraph, a request is deemed to be received by TVA only when it is physically delivered to the TVA FOIA Officer and meets all the requirements of paragraph (b) of this section. * * *

* * * * *

§ 1301.1 [Amended]

5. Section 1301.1 is amended by revising the first and second sentences of paragraph (c)(2)(i) to read as follows:

* * * * *

(c) * * *

(2) * * * (i) If the initial determination is to deny the request, the person making the request may appeal such action to the Vice President, Facilities Services. Such an appeal must be taken within 30 days after the person's receipt of the initial determination and is taken by delivering a written notice of appeal to the Vice President, Facilities Services, TVA, 400 Summit Hill Drive, Knoxville, TN 37902-1499. * * *

* * * * *

§ 1301.1 [Amended]

6. Section 1301.1 is amended by revising the third sentence of paragraph (c)(2)(ii) to read as follows:

* * * * *

(c) * * *

(2) * * *

(ii) * * * Determinations of appeals under this section shall be made by the Vice President, Facilities Services, or the Vice President, Facilities Services' designee. * * *

* * * * *

§ 1301.1 [Amended]

7. Section 1301.1 is amended by revising the second sentence of paragraph (c)(3)(i) to read as follows:

* * * * *

(c) * * *

(3) * * *

(i) * * * Such extension may not exceed 10 working days, and a decision to make such extension shall be made by the TVA FOIA Officer, or the TVA FOIA Officer's designee.

* * * * *

§ 1301.1 [Amended]

8. Section 1301.1 is amended by revising the fourth sentence of paragraph (c)(3)(ii) to read as follows:

* * * * *

(c) * * *

(3) * * *

(ii) * * * A decision to make an extension under this paragraph shall be made by the Vice President, Facilities Services, or the Vice President, Facilities Services' designee.

* * * * *

John J. O'Donnell,

Vice President, Facilities Services.

[FR Doc. 92-30457 Filed 12-16-92; 8:45 am]

BILLING CODE 8120-08-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

RIN 0960–AD18

Federal Old-Age, Survivors, and Disability Insurance Benefits; Extending Old-Age, Survivors, Disability, and Hospital Insurance Coverage to Certain State and Local Government Employees

AGENCY: Social Security Administration, HHS.

ACTION: Final rules.

SUMMARY: We are amending our regulations to reflect a statutory change as provided in section 11332 of Public Law (Pub. L.) 101–508, the Omnibus Budget Reconciliation Act of 1990 (OBRA '90). This statutory change extends mandatory Social Security old-age, survivors, disability, and hospital insurance (OASDHI) coverage to certain services performed by individuals who are employees of a State, a political subdivision of a State, or any wholly owned instrumentality of one or more of the above, and who are not members of the employer's retirement system. The statute also provides an exclusion from its coverage for certain listed services. The effect of this change is to provide OASDHI coverage and benefits to some employees whose services were previously excluded from the definition of mandatory covered employment.

EFFECTIVE DATES: December 17, 1992. The provisions of section 11332 of Public Law 101–508 apply to services performed after July 1, 1991.

FOR FURTHER INFORMATION CONTACT: Duane Heaton, Legal Assistant, 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, (301) 965–8470.

SUPPLEMENTARY INFORMATION:

Background

Prior to OBRA '90, services performed by individuals who were employees of a State (other than the District of Columbia, Guam, or American Samoa), a political subdivision of a State, or any wholly owned instrumentality thereof, were generally not covered under Social Security unless the State entered into a voluntary coverage agreement with the Secretary of Health and Human Services (the Secretary) as provided under section 218 of the Act. Although all States entered into agreements with the Secretary, many of the States excluded certain services from coverage. Many of these excluded services also were not under any public retirement plan. As a result, a part of the workforce was not participating in any public retirement plan and was not covered by Social Security. OBRA '90 provides mandatory OASDHI coverage for much of this workforce that was not under any public retirement plan.

In these final regulations, we are amending the Social Security regulations to reflect section 11332 of OBRA '90. Section 11332 amends section 210(a) of the Social Security Act (the Act) by extending mandatory OASDHI coverage to certain services performed by individuals who are employees of a State (other than the District of Columbia, Guam, or American Samoa), a political subdivision of a State, or any wholly owned instrumentality of one or more of the foregoing, and who are not members of the employer's retirement system. For purposes of administering this statute, the term "retirement system" has the meaning given in section 218(b)(4) of the Act, except as provided in regulations prescribed by the Secretary of the Treasury. Section 218(b)(4) states that "retirement system" means a pension, annuity, retirement, or similar fund or system established by a State or a political subdivision thereof.

The statute provides an exclusion from mandatory coverage for services performed:

1. By an individual who is employed to relieve him or her from unemployment;
2. In a hospital, home, or other institution by an individual who is a patient or inmate thereof;
3. By an individual as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or other similar emergency;
4. By an election official or election worker if the remuneration paid in a calendar year for such service is less than $100; or
5. By an employee in a position compensated solely on a fee basis which is treated, pursuant to section 211(c)(2)(E) of the Act, as a trade or business for purposes of inclusion of the fees in net earnings from self-employment.

In addition, exclusions from coverage set forth in other provisions of the Act such as the exclusion for services performed by students employed in public schools, colleges, and universities will continue to be applicable. Coverage for these students will continue to be provided at the option of the State under section 218 of the Act and such coverage which was provided prior to July 2, 1991, the effective date of OBRA section 11332, will continue.

Finally, the statute provides that services mandatorily covered under section 11332 of OBRA '90 may not be covered under a voluntary section 218 agreement.

Regulations Changes

We are amending the regulations to reflect section 11332 of Public Law 101–508 and to make a technical and clarifying change to § 404.1020(a). Specifically, we are amending the regulations as follows:

- The mandatory coverage and applicable exclusions are reflected in subpart K in a revised § 404.1020(a);
- The treatment of certain State and local government employees paid by fees is reflected in a revised § 404.1073;
- In revised §§ 404.1200 and 404.1201 of subpart M, we explain there is also mandatory OASDHI coverage, provide a cross-reference to § 404.1020(a), and make clear that subpart M regulations only apply to section 218 agreements, as appropriate;
- In revised § 404.1209 we explain that services mandatorily covered under section 11332 may not be covered under a section 218 agreement; and
- We also have made a technical change to § 404.1020(a) to make it clear that work as an employee of the District of Columbia, Guam, or American Samoa is not excluded from Social Security coverage if the work is covered under § 404.1021 or § 404.1022. This clarification reflects section 210(a)(7)(C), (D), and (E) of the Act and is consistent with our longstanding policy reflecting these statutory provisions. Without this technical change, § 404.1020(a) is potentially confusing on this point due to the fact that § 404.1004 defines the term "State" to include the District of Columbia, Guam, and American Samoa.

These revisions are non-discretionary; they are needed to reflect enacted legislation. For that reason, any cost impact from the policies these revisions codify is attributable to the legislation and not to the regulations.

Regulatory Procedures

Dispensing with the Notice of Proposed Rulemaking and Public Comment

We are publishing the above amendments to the regulations as final rules instead of proposed rules. The Department of Health and Human Services, even when not required by statute, as a matter of policy, generally follows the Administrative Procedure Act (APA) notice of proposed rulemaking and public comment

procedures specified in 5 U.S.C. 553 in the development of its regulations. The APA provides exceptions to its notice and comment procedures when an agency finds there is good cause for dispensing with such procedure. Section 553(b)(B) of the APA exempts application of notice and comment rulemaking procedure "when the agency for good cause finds * * * that notice and public procedures thereon are impracticable, unnecessary, or contrary to the public interest." We are dispensing with notice and comment rulemaking in the case of these regulations because such rulemaking is unnecessary since this change merely conforms the regulations to the controlling statute, does not involve administrative discretion, and does not independently affect the rights of claimants.

Executive Order No. 12291

The estimated impact on the trust funds for fiscal years (FY) 1991–1995 is as follows ($ in millions):

	FY 1991	FY 1992	FY 1993	FY 1994	FY 1995
Increase in OASDI payroll taxes	$467	$2,122	$2,275	$2,459	$2,661
Increase in HI payroll taxes	8	30	21	12	4
Increase in OASDI benefit payments	neg	neg	4	9	15

The overall increase in costs will exceed the threshold amount for a major rule under Executive Order 12291. However, because the policy codified in these regulations ultimately relates to transfer payments (i.e., benefit payments to members of the public), OMB has waived the requirement for a regulatory impact analysis for this rule.

Regulatory Flexibility Act

We certify that these final regulations will not have a significant economic impact on a substantial number of small entities, including small governmental jurisdictions. Any economic impact involved in the regulations reflecting section 11332 of Public Law 101–508 results directly from the statutory amendments, not from the regulations. Therefore, we believe that a regulatory flexibility analysis as provided in Public Law 96–354, the Regulatory Flexibility Act, is not required.

Paperwork Reduction Act

These final regulations impose no additional reporting and recordkeeping requirements subject to Office of Management and Budget clearance.

(Catalog of Federal Domestic Assistance: Programs Nos. 93.800 Medicare—Hospital Insurance; 93.801 Medicare—Supplementary Medical Insurance; 93.802 Social Security—Disability Insurance; 93.803 Social Security—Retirement Insurance; 93.805 Social Security—Survivor's Insurance.)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure; Death benefits; Disability benefits; Old-Age, Survivors, and Disability Insurance.

Editorial note: This document was received at the Office of the Federal Register December 10, 1992.

Dated: October 7, 1991.

Gwendolyn S. King,

Commissioner of Social Security.

Approved: December 18, 1991.

Louis W. Sullivan,

Secretary of Health and Human Services.

For the reasons set out in the preamble, part 404 of title 20 of the Code of Federal Regulations is amended as follows:

1. The authority citation for subpart K of part 404 is revised to read as follows:

Authority: Secs. 205(a), 209, 210, 211, 226, 226A, 229(a), 230, 231, and 1102 of the Social Security Act; 42 U.S.C. 405(a), 409, 410, 411, 426, 426–1, 429(a), 430, 431, and 1302; secs. 1151(d)(2)(C), 1704, and 1882 of Pub. L. 99–514, 100 Stat. 2505, 2779, and 2914; sec. 9003 of Pub. L. 100–203, 101 Stat. 1330–287; secs. 1011B(a)(23)(B) and 8013 of Pub. L. 100–647, 102 Stat. 3486 and 3789.

2. Section 404.1020 is amended by adding paragraphs (a)(3) and (a)(4) to read as follows:

§ 404.1020 Work for States and their political subdivisions and instrumentalities.

(a) * * *

(3) You perform services after July 1, 1991, as an employee of a State (other than the District of Columbia, Guam, or American Samoa), a political subdivision of a State, or any wholly owned instrumentality of one or more of the foregoing and you are not a member of a retirement system of such State, political subdivision, or instrumentality. Retirement system has the meaning given that term in section 218(b)(4) of the Act, except as provided in regulations prescribed by the Secretary of the Treasury. This paragraph does not apply to services performed—

(i) As an employee employed to relieve you from unemployment;

(ii) In a hospital, home, or other institution where you are a patient or inmate thereof;

(iii) As an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or other similar emergency;

(iv) As an election official or election worker if the remuneration paid in a calendar year for such service is less than $100; or

(v) As an employee in a position compensated solely on a fee basis which is treated, pursuant to section 211(c)(2)(E) of the Act, as a trade or business for purposes of inclusion of the fees in net earnings from self-employment; or

(4) The work is covered under § 404.1021 or § 404.1022.

* * * * *

3. Section 404.1073 is amended by revising paragraph (b)(1), redesignating paragraph (b)(2) as (b)(3), and adding a new paragraph (b)(2) to read as follows:

§ 404.1073 Public office.

* * * * *

(b) *State and local governmental employees paid by fees.* (1) *Voluntary coverage under section 218 of the Act.* The services of employees of States and political subdivisions, including those in positions paid solely on a fee-basis, may be covered as employment by a Federal-State agreement under section 218 of the Act (see subpart M of this part). States, when entering into these agreements, have the option of excluding under the agreement coverage of services in positions paid solely by fees. If you occupy a position paid solely on a fee-basis and the State has not covered your services under section 218 of the Act, you are considered to be engaged in a trade or business.

(2) *Mandatory old-age, survivors, disability, and hospital insurance coverage.* Beginning with services performed after July 1, 1991, Social Security coverage (old-age, survivors, disability, and hospital insurance) is mandatory, with certain exceptions, for services performed by employees of a State, a political subdivision of a State, or of a wholly owned instrumentality of one or more of the foregoing, if the employees are not members of a retirement system of the State, political

subdivision, or instrumentality. Among the exclusions from such mandatory coverage is service performed by an employee in a position compensated solely on a fee-basis which is treated pursuant to section 211(c)(2)(E) of the Act as a trade or business for purposes of inclusion of such fees in the net earnings from self-employment.

* * * * *

4. The authority citation for subpart M of part 404 is revised to read as follows:

Authority: Secs. 205, 210, 218, and 1102 of the Social Security Act; 42 U.S.C. 405, 410, 418, and 1302; sec. 12110 of Pub. L. 99–272, 100 Stat. 287, sec. 9002 of Pub. L. 99–509, 100 Stat. 1970.

5. Section 404.1200 is amended by revising the title of the section, designating the present text as (a), adding a new heading to paragraph (a), and adding a new paragraph (b) to read as follows:

§ 404.1200 General.

(a) *Coverage under section 218 of the Act.* * * *

(b) *Mandatory old-age, survivors, disability, and hospital insurance coverage.* Under section 210(a)(7)(F) of the Act, mandatory old-age, survivors, disability, and hospital insurance coverage is extended to certain services performed after July 1, 1991, by individuals who are employees of a State (other than the District of Columbia, Guam, or American Samoa), a political subdivision of the State, or any wholly owned instrumentality of one or more of the foregoing, and who are not members of the employer's retirement system. Certain services are excluded from such mandatory coverage (see § 404.1020(a)(3).

6. Section 404.1201 is amended by revising paragraph (a) to read as follows:

§ 404.1201 Scope of this subpart regarding coverage and wage reports and adjustments.

* * * * *

(a) Coverage under section 218 of the Act—

* * * * *

7. Section 404.1209 is amended by adding paragraph (f) to read as follows:

§ 404.1209 Mandatorily excluded services.

* * * * *

(f) Services covered under section 210(a)(7)(F) of the Act. (See § 404.1200(b).)

[FR Doc. 92–30391 Filed 12–16–92; 8:45 am]

BILLING CODE 4190–29–M

20 CFR Part 404

[Regulations No. 4]

RIN 0960–AC45

Federal Old-Age, Survivors and Disability Insurance; Extension of Social Security Coverage to Certain Workers; Medicare Only Coverage of Certain State and Local Government Employees; Medicare Qualified Government Employment

AGENCY: Social Security Administration, HHS.

ACTION: Final rules.

SUMMARY: We are revising several rules in Subpart K—Employment, Wages, Self-Employment, and Self-Employment Income—Part 404 of title 20 of the Code of Federal Regulations. These revisions reflect statutory enactments that—Extend Social Security coverage to certain work situations; and extend Medicare coverage to certain employees of States and their local governments.

We are also amending certain regulatory provisions of part 404, Subpart E—Deductions; Reductions; and Nonpayments of Benefits—to reflect the manner in which these statutory enactments affect the annual earnings test.

EFFECTIVE DATE: December 17, 1992.

FOR FURTHER INFORMATION CONTACT: L.V. Dudar, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–1795.

SUPPLEMENTARY INFORMATION:

Extension of Social Security Coverage

The Omnibus Budget Reconciliation Act of 1987 (OBRA 1987)—Public Law 100–203—contains several provisions extending and revising Social Security coverage to certain workers. An OBRA 1987 provision concerning coverage of agricultural work was subsequently amended by a provision of the Technical and Miscellaneous Revenue Act of 1988 (TAMRA)—Public Law 100–647. The amendments to the rules to reflect these statutory provisions are as follows.

Section 404.1015 Family Services

Based on section 210(a)(3)(A) of the Social Security Act (the Act), as amended by section 9005 of OBRA 1987, we are amending § 404.1015 to provide that the coverage exclusion that was applicable to a child under age 21 who is an employee of his or her parent(s) applies only when the child is under age 18. However, section 210(a)(3)(B) of the Act, as amended by section 9005 of OBRA 1987, provides that we continue to exclude from coverage the nonbusiness work or domestic service a child, age 18 through 20, may perform as an employee of his or her parent(s) and our revisions to the regulations reflect this requirement. At age 21, any work a child performs for his or her parent(s) is covered.

Based on section 210(a)(3) of the Act, as amended by section 9004 of OBRA 1987, we are deleting a paragraph of § 404.1015 and amending two other paragraphs of this section pertaining to spousal employment. These changes provide that service performed by a person working for his or her spouse is no longer excluded from coverage unless the work is nonbusiness or domestic work.

Section 404.1019 Work as a Member of a Uniformed Service of the United States

Based on section 210(l)(1) of the Act, as amended by section 9001 of OBRA 1987, we are amending paragraph (a) of this section to show that we will now provide Social Security coverage for inactive duty training performed by a member of a uniformed service.

Section 404.1055 Payments for Agricultural Labor

We are amending this section to reflect the change in coverage of agricultural labor required by the amendments of section 209(a)(7) of the Act (formerly section 209(h)(2) of the Act), by section 9002 of OBRA 1987 and section 8017 of TAMRA. These statutory changes provide that all cash payments to an employee for agricultural labor are covered wages if the employer's total expenditures for agricultural labor in the calendar year equal or exceed $2,500 annually irrespective of how much the individual was paid. If the employer's total annual expenditures are less than $2,500, cash payments to an employee of $150 or more are wages, but any amount below $150 is not wages. For a hand harvest laborer (i.e., seasonal agricultural labor), irrespective of the employer's expenditures for agricultural labor, cash payments of less than $150 annually are not wages if he or she (1) is paid on a piece rate basis as a hand harvester in a piece rate operation, (2) commutes to the farm daily, and (3) was employed less than 13 weeks in agriculture in the preceding calendar year. The earnings are covered, as under prior law, if the employer pays the employee $150 or more in a year. The provision in the regulation at § 404.1055(c) which covered an agricultural employee who works at

least 20 days for an employer for cash pay computed on a time basis (the 20-day test) has been eliminated as a result of section 9002 of OBRA 1987 with respect to remuneration paid for agricultural labor after December 31, 1987.

Section 404.1058 Special Situations

This section is amended to reflect one statutory provision. We will include as wages pay to members of a uniformed service while on inactive duty for training to reflect section 9001 of OBRA 1987. See also the amendment to § 404.1019—Work as a member of a uniformed service of the United States—discussed above.

Extension of Medicare Coverage

We are amending § 404.1018b—Medicare qualified government employment—to reflect the enactment of sections 9129 and 13205 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA of 1985—Pub. L. 99–272), which amends section 210(p) of the Act to provide for Medicare coverage, subject to certain exceptions, of employees of State and local political subdivisions. This Medicare protection applies mostly to State and local government employees hired after March 31, 1986, who are not covered under title II of the Social Security Act because the State did not enter into a coverage agreement with the Secretary of Health and Human Services under section 218 of the Social Security Act providing for such coverage. The employees who come under the scope of the COBRA of 1985 legislation are thus covered under Medicare but may not be under Social Security. The amended § 404.1018b also lists the categories of State and local government employees described under section 210(p)(2) of the Act as added by section 13205(b)(1) of COBRA 1985. The amended § 404.1018b also reflects the amendments to section 210(p)(2) of the Act by the enactment of section 1985(b)(18) of the Tax Reform Act of 1986 (Pub. L. 99–514), which excludes from mandatory Medicare coverage, election officials or election workers whose remuneration for such service is less than $100 in a calendar year. Section 11332 of the Omnibus Budget Reconciliation Act of 1990 (OBRA 1990—Pub. L. 101–508) mandated coverage of the services of most State and local employees not covered under a State or local employer's retirement system which are not already covered under a section 218 agreement, effective for services performed after July 1, 1991. We also are amending § 404.1020—Work for States and their political subdivisions and instrumentalities, § 404.1021—Work for the District of Columbia, and § 404.1022—American Samoa or Guam to include references to the pertinent § 404.1018b provisions.

Medicare coverage had previously been extended to Federal employment as the result of the enactment of section 278 of the Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97–248). These Medicare coverage provisions have been implemented by a separate regulation published on October 4, 1988 (53 FR 38943) (see § 404.1018b).

Annual Earnings Test Changes—Subpart E of Part 404

We are amending paragraph (c)(3) of § 404.429—Earnings; defined—to refer to the amended § 404.1055—Payments for agricultural labor (see above). The amended § 404.1055 reflects changes in agricultural labor coverage for remuneration paid after December 31, 1987, as required by the enactment of section 9002 of OBRA 1987 as later amended by section 8017 of TAMRA. Also, we are deleting the table of annual wage limitations from paragraph (c)(1) of § 404.429 since this table duplicates the table under § 404.1047. Paragraph (c)(1) of § 404.429 as amended will refer to the table under § 404.1047.

Public Comments

These rules were published as a notice of proposed rulemaking (NPRM) at 55 FR 37488 on September 12,1990. We received no comments on the proposed rules.

Deletion of Previously Published Section

The NPRM contained a proposed change which added a new § 404.1097 concerning income earned as a corporate director. The proposed change was dictated by section 9022 of OBRA 1987 with respect to the treatment of earnings of corporate directors for performance of services as a director. This proposed regulatory change, however, was subsequently negated by section 5123 of OBRA 1990 which reinstituted the rule as it existed prior to OBRA 1987. These final rules, therefore, contain no reference to earnings of a corporate director for services performed as a director since the statutory basis for this regulatory change no longer exists.

These regulations are non-discretionary; they are needed to reflect enacted legislation. For that reason any cost impact from the policies these revisions codify is attributable to the legislation and not to this regulation.

Regulatory Procedures

Executive Order 12291

These final regulations have been reviewed under Executive Order 12291 to determine whether a major rule is involved. Two provisions of these final regulations reflect statutory provisions with a significant cost impact on the public. The two provisions and their estimated costs are the following:

1. Social Security coverage of persons performing inactive duty training—estimated yearly costs starting in 1988 have risen to $452 million in FY 1992 and $474 million in FY 1993 with an estimated 1.4 million persons affected.

2. Medicare coverage of State and local employees—estimated yearly costs starting in 1986 have risen to $1,418 million in FY 1992 and $1,585 million in FY 1993 with an estimated 2 million employees affected.

The other legislative changes codified in this regulation will increase costs to the public by $8 million per year in FY 1992 and FY 1993. The overall increase in costs will exceed the threshold amount for a major rule under Executive Order 12291. However, because the policy codified in this regulation ultimately relates to transfer payments (i.e., benefit payments to members of the public), OMB has waived the requirement for a regulatory impact analysis for this rule.

Paperwork Reduction Act

These final regulations impose no reporting/recordkeeping requirements subject to Office of Management and Budget clearance.

Regulatory Flexibility Act

The Secretary certifies that these final rules will not have a significant economic impact on a substantial number of small entities. Small businesses should not be significantly affected by any of the statutory provisions reflected in these regulations and the tax collected and paid should be insignificant. The statutory provision extending Medicare to State and local government employees will cause some small governmental entities, whose employees had not previously been covered by Medicare, to have to pay the Medicare tax. However, this regulation simply reflects a statutory provision already in effect and implemented by IRS since March 31, 1986 (see Internal Revenue Service Bulletin No. 1986–28 (July 14, 1986)) and by the Health Care Financing Administration (42 CFR 406.15). Consequently, these final regulations have no overall economic impact. Therefore, a regulatory flexibility analysis, as provided in

Public Law 96–354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Programs: No. 93.802 Social Security—Disability Insurance; No. 93.803 Social Security—Retirement Insurance; No. 93.805 Social Security—Survivors Insurance.)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors, and Disability Insurance, Reporting and recordkeeping requirements; Social Security.

Editorial Note: This document was received by the Office of the Federal Register on December 10, 1992.

Dated April 20, 1992.

Gwendolyn S. King,

Commissioner of Social Security.

Approved: July 22, 1992.

Louis W. Sullivan,

Secretary of Health and Human Services.

Part 404 of chapter III, title 20 of the Code of Federal Regulations is amended as follows:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950-)

1. The authority citation for subpart E of part 404 continues to read as follows:

Authority: Secs. 202, 203, 204 (a) and (e), 205(a), 222(b), 223(e), 224, 227, and 1102 of the Social Security Act; 42 U.S.C. 402, 403, 404 (a) and (e), 405(a), 422(b), 423(e), 424, 427, and 1302.

2. Section 404.429 is amended by revising paragraphs (c)(1) and (c)(3) to read as follows:

§ 404.429 Earnings; defined.

* * * * *

(c) * * *

(1) Remuneration in excess of the amounts in the annual wage limitation table in § 404.1047;

* * * * *

(3) Payments for agricultural labor excluded under § 404.1055.

* * * * *

3. The authority citation for subpart K of part 404 continues to read as follows:

Authority: Secs. 205(a), 209, 210, 211, 226, 226A, 229(a), 230, 231, and 1102 of the Social Security Act; 42 U.S.C. 405(a), 409, 410, 411, 426, 426–1, 429(a), 430, 431, and 1302; Secs. 1151(d)(2)(C), 1704, and 1882 of Pub. L. 99–514, 100 Stat. 2505, 2779, and 2914; Sec. 9003 of Pub. L. 100–203, 101 Stat. 1330–287; Secs. 1011B(a)(23)(B) and 8013 of Pub. L. 100–647, 102 Stat. 3486 and 3789.

4. Section 404.1015 is amended by removing present paragraph (a)(1), redesignating the present paragraph (a)(2) as paragraph (a)(1) and revising this redesignated paragraph, adding a new paragraph (a)(2), revising paragraph (a)(3), and revising the paragraph (a)(4) introductory text to read as follows:

§ 404.1015 Family services.

(a) * * *

(1) You work while under age 18 in the employ of your parent;

(2) You do nonbusiness work (see § 404.1058(a)(3) for an explanation of nonbusiness work) or perform domestic service (as described in § 404.1057(b)) as an employee of your parent while under age 21;

(3) You do nonbusiness work as an employee of your son, daughter, or spouse; or

(4) You perform domestic service in the private home of your son, daughter or spouse as an employee of that son, daughter or spouse unless—

* * * * *

5. Section 404.1018b is revised to read as follows:

§ 404.1018b Medicare qualified government employment.

(a) *General.* The work of a Federal, State, or local government employee not otherwise subject to Social Security coverage may constitute Medicare qualified government employment. Medicare qualified government employment means any service which in all ways meets the definition of "employment" for title II purposes of the Social Security Act, except for the fact that the service was performed by a Federal, State or local government employee. This employment is used solely in determining eligibility for protection under part A of title XVIII of the Social Security Act (Hospital Insurance) and for coverage under the Medicare program for end-stage renal disease.

(b) *Federal employment.* If, beginning with remuneration paid after 1982, your service as a Federal employee is not otherwise covered employment under the Social Security Act, it is Medicare qualified government employment unless excluded under § 404.1018(c).

(c) *State and local government employment.* If, beginning with service performed after March 31, 1986, your service as an employee of a State or political subdivision (as defined in § 404.1202(b)), Guam, American Samoa, the District of Columbia, or the Northern Mariana Islands is excluded from covered employment solely because of section 210(a)(7) of the Social Security Act which pertains to employees of State and local governments (note §§ 404.1020 through 404.1022), it is Medicare qualified government employment except as provided in paragraphs (c) (1) and (2) of this section.

(1) An individual's service shall not be treated as employment if performed—

(i) By an individual employed by a State or political subdivision for the purpose of relieving that individual from unemployment;

(ii) In a hospital, home, or other institution by a patient or inmate thereof as an employee of a State, political subdivision, or of the District of Columbia;

(iii) By an individual, as an employee of a State, political subdivision or the District of Columbia serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or other similar emergency;

(iv) By an individual as an employee included under 5 U.S.C. 5351(2) (relating to certain interns, student nurses, and other student employees of hospitals of the District of Columbia government), other than as a medical or dental intern or a medical or dental resident in training; or

(v) By an election official or election worker paid less than $100 in a calendar year for such service.

(2) An individual's service performed for an employer shall not be treated as employment if—

(i) The service would be excluded from coverage under section 210(a)(7) of the Social Security Act which pertains to employees of State and local governments;

(ii) The service is performed by an individual who—

(A) Was performing substantial and regular service for remuneration for that employer before April 1, 1986;

(B) Was a bona fide employee of that employer on March 31, 1986; and

(C) Did not enter into the employment relationship with that employer for purposes of meeting the requirements of paragraphs (c)(2)(ii) (A) and (B) of this section; and

(iii) After March 31, 1986, but prior to the service being performed, the employment relationship with that employer had not been terminated.

6. Section 404.1019 is amended by revising paragraph (a) to read as follows:

§ 404.1019 Work as a member of a uniformed service of the United States.

(a) Your work as a member of a uniformed service of the United States is covered under Social Security (unless creditable under the Railroad Retirement Act), if—

(1) On or after January 1, 1957, the work is service on active duty or active duty for training but not including service performed while on leave without pay; or

(2) On or after January 1, 1988, the work is service on inactive duty training.

* * * * *

7. Section 404.1020 is amended by revising present paragraph (a)(2), redesignating present paragraph (b) as paragraph (c), adding a new paragraph (b), and revising redesignated paragraphs (c)(4)(ii)(B) and (c)(4)(iv)(B) to read as follows:

§ 404.1020 Work for States and their political subdivisions and instrumentalities.

(a) *General.*

* * * * *

(2) The work is *covered transportation service* as defined in section 210(k) of the Act (see paragraph (c) of this section).

(b) *Medicare qualified government employment.* Notwithstanding the provisions of paragraph (a) of this section, your work may be covered as Medicare qualified government employment (see § 404.1018b(c) of this subpart).

(c) * * *

(4) * * *

(ii) * * *

(B) Covered by a general retirement system which contains special provisions that apply only to employees described in paragraph (c)(4)(i)(B) of this section;

* * * * *

(iv) * * *

(B) The general retirement system described in paragraph (c)(2)(ii) of this section was in effect on December 31, 1950.

* * * * *

8. Section 404.1021 is amended by adding paragraph (c) to read as follows:

§ 404.1021 Work for the District of Columbia.

* * * * *

(c) *Medicare qualified government employment.* If your work is not covered under Social Security, it may be covered as Medicare qualified government employment (see § 404.1018b(c) of this subpart).

9. Section 404.1022 is amended by adding paragraph (d) to read as follows:

§ 404.1022 American Samoa or Guam.

* * * * *

(d) *Medicare qualified government employment.* If your work is not covered under Social Security, it may be covered as Medicare qualified government employment (see § 404.1018b(c) of this subpart).

10. Section 404.1055 is revised to read as follows:

§ 404.1055 Payments for agricultural labor.

(a) *The $2,500 expenditures and $150 cash-pay tests.* Your cash payments in a calendar year after 1987 from an employer for agricultural labor (see § 404.1056) are wages if—

(1) Your employer's total expenditures for agricultural labor in that year are $2,500 or more, regardless of how much you were paid, or

(2) Your employer's total expenditures for agricultural labor are less than $2,500 in that year and your employer paid you $150.00 or more in that year.

(b) *Exceptions to the $2,500 expenditures and $150 cash-pay tests.* (1) Noncash payments for agricultural labor are not wages under either the $2,500 expenditures or $150 cash-pay test.

(2) Your cash payments in a calendar year from an employer for agricultural labor are not wages, irrespective of your employer's total annual expenditures for agricultural labor, if you are a hand harvest laborer (i.e., seasonal agricultural labor), and—

(i) Your employer paid you less than $150 in that year;

(ii) You are paid on a piece rate basis in an operation which has been, and is customarily and generally recognized in the region of employment as paying on a piece rate basis;

(iii) You commute daily from your permanent residence to the farm on which you are so employed; and,

(iv) You were employed in agriculture less than 13 weeks during the previous calendar year.

Example: In 1988, A (not a hand harvest laborer) performs agricultural labor for X for cash pay of $144 in the year. X's total agricultural labor expenditures for 1988 are $2,450. Neither the $150 cash-pay test nor the $2,500 expenditures test is met. Therefore, X's payments to A are not wages.

(c) *When cash-pay is creditable as wages.* (1) If you receive cash pay from an employer for services which are agricultural labor and for services which are not agricultural labor, we count only the amounts paid for agricultural labor in determining whether cash payments equal or exceed $150. If the amounts paid are less than $150, we count only those amounts paid for agricultural labor in determining the wages to credit the individual if the $2,500 expenditures test is met (for periods beginning on or after January 1, 1988) or the 20-day work test described in paragraph (c) of this section (for periods of time prior to 1988).

Example: Employer X operates a store and also operates a farm. Employee A, who regularly works in the store, works on X's farm when additional help is required for the farm activities. In calendar year 1988, X pays A $140 cash for agricultural labor performed in that year, and $2,260 for work in connection with the operation of the store. Additionally, X's total expenditures for agricultural labor in 1988 were $2,010. Since the cash payments by X to A in the calendar year 1988 for agricultural labor are less than $150, and total agricultural labor expenditures were under $2,500, the $140 paid by X to A for agricultural labor is not wages. The $2,260 paid for work in the store is wages.

(2) The amount of cash pay for agricultural labor that is creditable to an individual is based on cash paid in a calendar year rather then on amounts earned during a calendar year.

(3) If you receive cash pay for agricultural labor in any one calendar year from more than one employer, we apply the $150 cash-pay test and $2,500 total expenditures test to each employer.

(d) *Application of the $150 cash-pay and 20-day tests prior to 1988.* (1) For the time period prior to 1988, we apply either the $150 a year cash-pay test or the 20-day test. Cash payments are wages if you receive $150 or more from an employer for agricultural labor or under the 20-day test if you perform agricultural labor for which cash pay is computed on a time basis on 20 or more days during a calendar year. For purposes of the 20-day test, the amount of the cash pay is immaterial, and it is immaterial whether you also receive payments other than cash or payments that are not computed on a time basis. If cash paid to you for agricultural labor is computed on a time basis, the payments are not wages unless they are paid in a calendar year in which either the 20-day test or the $150 cash-pay test is met.

11. Section 404.1058 is amended by revising paragraph (c)(1), adding introductory text to paragraph (c)(2), and adding paragraph (c)(4) to read as follows:

§ 404.1058 Special situations.

* * * * *

(c) * * *

(1) *The standard.* We include as the wages of a member of the uniformed services—

(i) Basic pay, as explained in paragraph (c)(3) of this section, for performing the services described in paragraph (a)(1) of § 404.1019 of this subpart; or

(ii) Compensation, as explained in paragraph (c)(4) of this section, for performing the services described in paragraph (a)(2) of § 404.1019 of this subpart.

(2) *Wages deemed paid.* These following provisions apply to members

of the uniformed services who perform services as described in paragraph (a)(1) of § 404.1019 of this subpart.

* * * * *

(4) *Compensation.* "Compensation" refers to the remuneration received for services as a member of a uniformed service, based on regulations issued by the Secretary concerned (as defined in 37 U.S.C. 101(5) under 37 U.S.C. 206(a), where such member is not entitled to the basic pay (as defined by paragraph (3) of this section).

* * * * *

[FR Doc. 92–30390 Filed 12–16–92; 8:45 am]

BILLING CODE 4190–29–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8357]

RIN 1545–AI79

Certain Cash or Deferred Arrangements and Employee and Matching Contributions Under Employee Plans; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correcting amendment.

SUMMARY: This document contains corrections to the final regulations (T.D. 8357), which were published Wednesday, March 25, 1992 (57 FR 10289), relating to certain cash or deferred arrangements (CODAs) and employee and matching contributions under employee plans.

EFFECTIVE DATE: August 15, 1991.

FOR FURTHER INFORMATION CONTACT: Catherine Livingston Fernandez, 202–622–6030, (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The final regulation that is the subject of this correction replaces all of the 1988 proposed and final regulations on these subjects, and the amendments to regulations under section 401 (k) and (m) of the Internal Revenue Code of 1986, issued on May 14, 1990.

Need for Correction

As published, T.D. 8357 contains an error which may prove to be misleading and is in need of clarification.

List of Subjects for 26 CFR 1.401–0 Through 1.419A–2T

Bonds, Employee benefit plans, Income taxes, Pensions, Reporting and recordkeeping requirements, Securities, Trusts and trustees.

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Accordingly, 26 CFR part 1 is corrected by making the following correcting amendment:

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

Authority: 26 U.S.C. 7805 * * *

Par. 2. In § 1.401(k)–1 (f)(3)(ii), the first sentence in the concluding text is revised to read as follows:

§ 1.401(k)–1 Certain cash or deferred arrangements.

* * * * *

(f) * * *

(3) * * *

(ii) * * *

Recharacterized excess contributions continue to be treated as employer-contributions that are elective contributions for all other purposes under the Internal Revenue Code, including sections 401(a) (other than 402(a)(4) and 401(m)), 404, 409, 411, 412, 415, 416, and 417. * * *

* * * * *

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 92–30311 Filed 12–16–92; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting and Supervising Federal Prisoners; Domestic and Foreign Travel by Federal Parolees

AGENCY: Parole Commission, Justice.

ACTION: Final rule.

SUMMARY: The U.S. Parole Commission is amending its regulations to change the procedure by which travel requests from federal parolees are approved. Current Commission procedures require Parole Commission approval for any parolee who requests permission to travel outside the contiguous forty-eight states of the United States. Approval for travel within the contiguous forty-eight states of the United States may be granted by the U.S. Probation Office. This rule change allows the U.S. Probation Office to grant and deny requests for travel within the United States, including Alaska and Hawaii, as well as the U.S. Territories. Parole Commission approval will be required only for a request to travel to a foreign country.

EFFECTIVE DATE: January 19, 1993.

FOR FURTHER INFORMATION CONTACT: Richard Preston, Office of General Counsel, telephone (301) 492–5959.

SUPPLEMENTARY INFORMATION: The Commission has decided to allow U.S. Probation Offices to determine whether a parolee should be permitted to travel not only within the contiguous forty-eight states of the United States, but also to Alaska and Hawaii, as well as the U.S. Territories (*e.g.*, Puerto Rico, Guam and the Virgin Islands). The Commission has decided that this procedure is appropriate because continuing parole supervision by a U.S. Probation Officer is available for any parolee who is granted permission to travel to these destinations. Coordination of supervision may be arranged between the U.S. Probation Officers concerned, who can also determine the appropriateness of the travel request itself.

The Commission will retain its requirement for approval by a U.S. Parole Commissioner in the case of any request to travel to a foreign country. These requests must be closely examined because no supervision will be available for the parolee, and a variety of sensitive questions may be involved (*e.g.*, travel to a foreign country that prohibits entry to individuals convicted of certain felonies, or travel to a foreign country that is known for its bank secrecy laws by a parolee who has not adequately accounted for the proceeds for his crime). The Commission will also continue to review all requests for recurring travel and extended vacation travel.

Executive Order 12291 and Regulatory Flexibility Statement

The U.S. Parole Commission has determined that this final rule is not a major rule within the meaning of Executive Order 12291. The rule will not have a significant economic impact upon a substantial number of small entities, within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 605(b).

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Probation and parole, Prisoners.

Accordingly, the U.S. Parole Commission adopts the following amendment to 28 CFR part 2:

PART 2—[AMENDED]

1. The authority citation for 28 CFR part 2 continues to read as follows:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

2. Section 2.41 is amended by revising paragraph (b) to read as follows:

§ 2.41. Travel approval.

* * * * *

(b) Specific advance approval by the Commission is required for all foreign travel, employment requiring recurring travel more than fifty miles outside the district (except employment at offshore locations), and vacation travel outside the district exceeding thirty days. A request for such permission shall be in writing and must demonstrate a substantial need for such travel.

* * * * *

Dated: November 3, 1992.

Edward F. Reilly, Jr.,

Chairman, U.S. Parole Commission.

[FR Doc. 92-30547 Filed 12-16-92; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF THE INTERIOR

U.S. Geological Survey

30 CFR Part 400

RIN 1028-AA04

Regulations for Obtaining Federal Assistance in Financing Explorations for Mineral Reserves, Excluding Organic Fuels, in the United States, its Territories and Possessions

AGENCY: U.S. Geological Survey, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Geological Survey (USGS) has reviewed its regulations for currency, adequacy, and continued need. Consequently, the USGS is removing the Regulations for Obtaining Federal Assistance in Financing Explorations for Mineral Reserves, Excluding Organic Fuels, in the United States, its Territories and Possessions because the program has had no funding authority since 1979, and it is doubtful that funding will be authorized in the foreseeable future.

EFFECTIVE DATE: January 19, 1993.

FOR FURTHER INFORMATION CONTACT: Gary C. Curtin, 913 National Center Reston, Virginia 22092, 703-648-4242.

SUPPLEMENTARY INFORMATION:

Response to Public Comment

No comments were received from the public in response to the proposed rule as published in the **Federal Register** (57 FR 43411) on September 21, 1992.

Required Analyses

The Department of the Interior has determined this document is not a major rule under E.O. 12291 and certifies 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.). Because the program has not been funded since 1979, removal of the regulations will not adversely affect the Nation's economy or any small entities in industry or Government.

This action will have no potential for significant environmental impact and is categorically excluded from the requirements for compliance with the National Environmental Policy Act of 1969, as amended (Pub. L. 91-190, 83 Stat. 852).

Paperwork Reduction Act

No information collection or recordkeeping has been required under the regulations since 1989.

Executive Order No. 12778

The Department has certified to the Office of Management and Budget that this proposed regulation meets the applicable standards provided in Sections 2(a) and 2(B) of Executive Order No. 12778.

Author

The principal author of this proposed rule is Gary Curtin, Geologic Division, U.S. Geological Survey.

List of Subjects in 30 CFR Part 400

Government contracts, Grant programs-natural resources, Mineral resources, Mineral royalties.

PART 400—[REMOVED]

Under the authority of 30 U.S.C. 642(e) and for the reasons stated above, 30 CFR part 400 is removed.

Dated: November 16, 1992.

Harlan L. Watson,

Principal Deputy Assistant Secretary—Water and Science.

[FR Doc. 92-30477 Filed 12-16-92; 8:45 am]

BILLING CODE 4310-31-M

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

Indiana Permanent Regulatory Authority

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing the approval of a proposed amendment to the Indiana permanent regulatory program (hereinafter referred to as the Indiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment consists of proposed changes to the Indiana Surface Mining Rules at 310 Indiana Administrative Code (IAC) 12-3, 12-8, and 12-9 concerning reclamation fees. The amendment specifies the requirements for payment of the reclamation fee established by Indiana Code (IC) 13-4.1-3-2. The amendment is intended to revise the Indiana program to be consistent with the corresponding Federal regulations.

EFFECTIVE DATE: December 17, 1992.

FOR FURTHER INFORMATION CONTACT: Roger W. Calhoun, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Minton-Capehart Federal Building, 575 North Pennsylvania Street, room 301, Indianapolis, IN 46202, Telephone (317) 226-6166.

SUPPLEMENTARY INFORMATION:

I. Background on the Indiana Program

On July 29, 1982, the Indiana program was made effective by the conditional approval of the Secretary of the Interior. Information pertinent to the general background on the Indiana program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Indiana program can be found in the July 26, 1982, Federal Register (47 FR 32017). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 914.15 and 914.16.

II. Submission of Amendment

By letter dated May 7, 1992 (Administrative Record No. IND-1079), the Indiana Department of Natural

Resources (IDNR) submitted a proposed amendment to the Indiana program. The proposed amendment would repeal 310 IAC 12–3–8, 12–3–9, 12–8–4, and 12–8–8. A new rule would be added at 310 IAC 12–9 which would address the applicability of reclamation fees, fee payment, and production records.

OSM announced receipt of the proposed amendment in the July 14, 1992, **Federal Register** (57 FR 31162), and in the same notice, opened the public comment period on the adequacy of the proposed amendment. The public comment period ended on August 13, 1992. The scheduled public hearing was not held as no one requested an opportunity to provide testimony.

By letter dated October 20, 1992 (Administrative Record Number IND–1160), Indiana informed OSM of changes made to the proposed rules during Indiana's rule promulgation process. The changes are nonsubstantive and are discussed in the findings, below.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment to the Indiana program. Revisions which are not discussed below concern nonsubstantive wording changes.

1. 310 IAC 12–9–1 Scope

This proposed new provision provides that proposed rule 310 IAC 12–9 sets forth the requirements for payment of the reclamation fee under IC 13–4.1–3–2. The Indiana statute at IC 13–4.1–3–2 provides permit application fee requirements which include a fee based on assessment of five and one-half cents per ton of coal produced. OSM approved the addition of the per-tonnage permit fee as a replacement to the previously approved permit application fee plus a permit fee of $125 per acre described in the application in the December 13, 1991, **Federal Register** (56 FR 64997). SMCRA at section 507(a) and the Federal regulations at 30 CFR 777.17 provide that each permit application shall be accompanied by a fee determined by the regulatory authority. The Federal provisions also authorize the regulatory authority to develop procedures which would enable the cost of the fee to be paid over the term of the permit. The Director finds the proposed provisions to be no less effective than SMCRA and the Federal regulations.

2. 310 IAC 12–9–2 Reclamation Fee

Proposed new subsection (a) provides that until July 1, 1995, a reclamation fee of five and one-half cents per ton of coal produced for sale, transfer, or use is required. Proposed new subsection (b) provides for that until July 1, 1995, a reclamation fee of one cent per ton of coal produced from Indiana shall be paid by all operators of underground coal mining operations with no support facilities located within Indiana, but producing coal from reserves located within Indiana. The Director finds these proposed provisions to be no less effective than the Federal regulations at 30 CFR 777.17 which provides that each permit application shall be accompanied by a fee determined by the regulatory authority and that such cost may be paid over the term of the permit.

Proposed new subsection (c) provides that the reclamation fee shall be determined based upon the weight of the coal at the time of initial bona-fide sale, transfer of ownership, or use by the operator. The proposed provision also specifies how bona-fide sale, transfer of ownership, or use shall be determined. There is no direct Federal counterpart to the proposed provisions at subsection (c). Proposed new subsection (d) provides that an operator may take a calculated weight reduction to allow for the weight of excess moisture in the coal subject to specified requirements. The Federal regulations at 30 CFR 777.17 provide that the regulatory authority may develop procedures to allow a reclamation fee to be paid over the term of a permit, but do not provide examples of such procedures. Indiana has chosen to adopt procedures similar to those at 30 CFR 870.12 concerning abandoned mine reclamation fund fee collection. The Director finds that Indiana's proposed fee collection procedures are not inconsistent with the Federal regulations and that the proposed reclamation fee is no less effective than the Federal regulations at 30 CFR 777.17.

3. 310 IAC 12–9–3 Fee Payment

Proposed new subsection (a) provides that each operator shall pay the reclamation fee concurrently with the Federal reclamation fee under SMCRA. Proposed subsections (b) and (c) provide reporting and payment procedures, while proposed subsection (d) provides delinquent payment procedures. During the promulgation process, Indiana clarified subsection (b) by adding that report form DOR–1 is "set out in the Division of Reclamation, Reclamation Fee Handbook, Revised August 1991." Indiana also added language at subsection (c) to clarify that "wire transfer, if available, can be used for payment of the reclamation fee, and the operation shall submit a copy of Form DOR–1 within five (5) days of the transfer." There are no direct Federal counterparts to the proposed provisions. However, Indiana's proposed provisions are similar to those at 30 CFR 870.15 concerning abandoned mine reclamation fee payment. The Director finds that Indiana's proposed fee payment provisions are not inconsistent with the Federal regulations and that the proposed reclamation fee payment provisions are no less effective than the Federal regulations at 30 CFR 777.17.

4. 310 IAC 12–9–4 Production Records

Proposed subsection (a) provides that any person engaging in or conducting a surface coal mining operation shall maintain current records that contain minimum specified information. Proposed subsection (b) provides the IDNR with access to the records of any surface coal mining operation for the purpose of determining compliance with rule 310 IAC 12–9. Proposed subsection (c) provides that any person engaging in or conducting a surface coal mining operation shall make available any book or record necessary to substantiate the accuracy of reclamation fee reports and payments. Subsection (c) also provides for copying of information, confidentiality of information, and auditing of OSM information in lieu of an IDNR audit of a permittee's books or records. Proposed subsection (d) provides that coal production books and records must be kept for a period of six years. Subsection (e) provides the procedures the IDNR shall use to estimate production if such records are not kept or not provided, and procedures an operator shall follow to request that the IDNR revise such an estimate. During the promulgation process for these rules, Indiana clarified proposed 310 IAC 12–9–4 by deleting the word "surface" in five locations. The deletions changed the phrase "surface coal mining operation" to read "coal mining operation." The deletions are intended to clarify that reference is made to coal mining operations and not limited to only surface coal mining operations.

There are no direct Federal counterparts to the proposed provisions. However, Indiana's proposed provisions are similar to those at 30 CFR 870.16 concerning abandoned mine reclamation production records. The Director finds that Indiana's proposed production records provisions are not inconsistent with the Federal regulations and that the proposed

production records provisions are no less effective than the Federal regulations at 30 CFR 777.17.

5. 310 IAC 12–3–8; 12–3–9; 12–8–4; and 12–8–8 Repealed

Indiana proposes to delete these provisions and to replace them with the proposed provisions at 310 IAC 12–9 discussed above at Findings 1 through 4. As discussed in the Findings above, the Director finds that the proposed provisions concerning Indiana's reclamation division fund reclamation fee, are no less effective than the Federal regulations. Therefore, the Director finds that the proposed deletion of 310 IAC 12–3–8; 12–3–9; 12–8–4; and 12–8–8 will not render the Indiana program less effective than the Federal regulations.

IV. Summary and Disposition of Comments

Public Comments

The public comment period announced in the July 14, 1992, Federal Register (57 FR 31162) ended on August 13, 1992. No public comments were received and a public hearing was not held as no one requested an opportunity to provide testimony.

Agency Comments

Pursuant to section 503(b) of SMCRA and the implementing regulations at 30 CFR 732.17(h)(11)(i), comments were solicited from various Federal agencies with an actual or potential interest in the Indiana program. No comments were received.

V. Director's Decision

Based on the above findings, the Director is approving the program amendment submitted by Indiana on May 7, 1992, and amended by letter dated October 20, 1992. The Federal regulations at 30 CFR part 914 codifying decisions concerning the Indiana program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to conform their programs with the Federal standards without delay. Consistency of State and Federal standards is required by SMCRA.

EPA Concurrence

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the Environmental Protection Agency (EPA) with respect to any provisions of a State program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). The Director has determined that this amendment contains no provisions in these categories and that EPA's concurrence is not required.

VI. Procedural Determinations

Executive Order 12291

On July 12, 1984, the Office of Management and Budget (OMB) granted the Office of Surface Mining Reclamation and Enforcement (OSM) an exemption from section 3, 4, 7 and 8 of Executive Order 12291 for actions related to approval or conditional approval of State regulatory programs, actions and program amendments. Therefore, preparation of a regulatory impact analysis is not necessary and OMB regulatory review is not required.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of the Surface Mining Control and Reclamation Act (SMCRA) (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.13 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(c) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 *et seq.*

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 914

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 29, 1992.

David G. Simpson,

Acting Assistant Director, Eastern Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 914—INDIANA

1. The authority citation for part 914 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 914.15 is amended by adding a new paragraph (qq) to read as follows:

§ 914.15 Approval of regulatory program amendments.

* * * * *

(pp) [Reserved]

(qq) The following amendment (Program Amendment Number 92–2) to the Indiana program as submitted to OSM on May 7, 1992, and amended by letter dated October 20, 1992, is approved effective December 17, 1992.

(1) Addition of the following Indiana regulations:

310 IAC 12–9–1	Scope
310 IAC 12–9–2	Reclamation Fee
310 IAC 12–9–3	Fee Payment
310 IAC 12–9–4	Production Records

(2) Repeal of the following Indiana regulations:

310 IAC 12–3–8
310 IAC 12–3–9

310 IAC 12–8–4
310 IAC 12–8–8

[FR Doc. 92–30481 Filed 12–16–92; 8:45 am]
BILLING CODE 4310–05–M

30 CFR Part 917

Kentucky State Abandoned Mine Land Program; Expanded Eligibility Criteria, Acid Mine Drainage Treatment and Abatement Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendments.

SUMMARY: OSM is announcing the approval of proposed program amendments to the Kentucky State Abandoned Mine Land Reclamation (AMLR) Plan (hereinafter referred to as the Kentucky AMLR plan), and Kentucky Revised Statutes (KRS) Chapter 350, under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendments were filed in response to changes to SMCRA made by the Abandoned Mine Land (AML) Reclamation Act of 1990 (Pub. L. 101–508) which was enacted on November 5, 1990, and became effective October 1, 1991. The amendments revise Kentucky's AMLR Plan and KRS Chapter 350 to be consistent with the changes to SMCRA.

EFFECTIVE DATE: December 17, 1992.

FOR FURTHER INFORMATION CONTACT: William J. Kovacic, Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 2675 Regency Road, Lexington, Kentucky 40503, Telephone (606) 233–2896.

SUPPLEMENTARY INFORMATION:

I. Background on the Kentucky Program

On May 18, 1982, the Secretary of the Interior conditionally approved the Kentucky program. Information pertinent to the general background and revisions to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval can be found in the May 18, 1982, **Federal Register** (47 FR 21404–21435). Subsequent actions concerning the conditions of approval and proposed amendments are identified at 30 CFR 917.11, 917.13, 917.15, 917.16 and 917.17.

On May 18, 1982, the Secretary of the Interior approved the Kentucky AMLR plan. Information pertinent to the general background on the Kentucky AMLR Plan including the Secretary's findings, the disposition of comments and a detailed explanation of the approval of the Kentucky AMLR Plan can be found in the May 18, 1982, **Federal Register** (47 FR 21435–21439). Subsequent actions concerning AMLR Plan amendments are identified at 30 CFR 917.21.

II. Submission of Amendment

By letter dated June 24, 1992, (Administrative Record No. K–63), Kentucky submitted a proposed amendment modifying the Kentucky AMLR plan. The amendment consists of revisions to the narratives in Chapter 3, Goals and Obligations, and Chapter 15, Maps of Eligible Lands and Waters.

OSM announced receipt of the proposed amendment in the September 14, 1992, **Federal Register** (57 FR 41897), and in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The comment period closed on October 14, 1992.

By Letter dated July 30, 1992 (Administrative Record Number KY–1171), Kentucky submitted a proposed program amendment consisting of seven bills affecting Kentucky Revised Statutes Chapter 350 and a resolution that were enacted by the 1992 Regular Session of the Kentucky General Assembly. Included among the seven bills was Senate Bill 191 (SB–191) which made several revisions to KRS Chapter 350 for consistency with SMCRA as amended by Public Law 101–508, the "Abandoned Mine Reclamation Act of 1990." OSM is separating SB–191 from the July 30, 1992, submission so that it can be considered together with Kentucky's June 24, 1992, revision to its AMLR Plan.

OSM announced receipt of the July 30, 1992, amendment in the September 23, 1992, **Federal Register** (57 FR 43952), and in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the amendment. The comment period closed on October 23, 1992.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR part 884, and 30 CFR 732.15 and 732.17 are the Director's findings concerning the proposed amendment to the Kentucky AMLR Plan and the revisions to Kentucky's Revised Statutes. Any minor revisions not specifically discussed below are found to be no less stringent than SMCRA and no less effective than the Federal regulations. Revisions not specifically discussed below contain language similar to the corresponding Federal rules, concern nonsubstantive wording changes, or revised cross-references and paragraph notations to reflect organizational changes resulting from this amendment.

A. Revisions to Kentucky's AMLR Plan

(1) Goals and Obligations (30 CFR 884.13(c)(1))

Kentucky is revising this part of the plan in order to incorporate a reference to Public Law 101–508 (The Abandoned Mine Land Reclamation Act of 1990), which amended Title IV of Public Law 95–87 (SMCRA) effective October 1, 1991. Kentucky is also replacing the phrase "mined areas which were left without adequate reclamation prior to enactment of the law", with the phrase "eligible lands and waters, as defined in Chapter 15". In addition, Kentucky is adding a reference to conditions which endanger the "general welfare" of the public. The Director finds that the proposed changes which reference the revisions to SMCRA made by P.L. 101–508 and which provide overall clarity to Kentucky's AMLR Plan are not inconsistent with the requirements of SMCRA.

(2) Maps of Eligible Lands and Waters (30 CFR 884.13(f)(i))

Kentucky is revising this part of the plan to include among those lands and waters eligible for reclamation activities under Title IV of SMCRA, those post-1977 abandoned mine lands and water made eligible for reclamation by the AML Reclamation Act of 1990, which amended SMCRA. By letter dated October 6, 1992, Kentucky corrected several typographical errors in the amendment to Chapter 15, page 15–1, "Maps and Eligible Lands and Water." The amendment as corrected, extends eligibility to those Priority I and II sites for which there are insufficient funds to provide adequate reclamation or abatement and that resulted from: (1) Interim period coal mining operations that occurred between August 4, 1977 and May 18, 1982, or (2) permitted coal mining facilities which operated on or after August 4, 1977, and ended on or before November 5, 1990, and during this period the surety for the mine operator became insolvent. The revision also provides that there must be no

continuing responsibility for reclamation by the operator, permittee, or agent of the permittee under State or Federal statutes.

Section 402(g)(4)(B) of SMCRA provides for the expenditure of funds for the reclamation or drainage abatement of sites if the surface coal mining operation occurred during the period beginning August 4, 1977, and either (a) Ending on or before the date of approval of the State program, or (b) ending on or before the enactment of section 402(g)(4), and during which period the surety of the mine operator became insolvent.

The Director finds Kentucky's proposed amendments to the "Maps of Eligible Lands and Waters" section of its plan to be no less stringent than the requirements of section 402(g) of SMCRA.

B. Revisions to Kentucky's Revised Statutes (KRS) Chapter 350 That Are Substantively Identical to the Corresponding Federal Statute (SMCRA)

KRS Ch 350	Subject	SMCRA
350.560(2)	Reclamation Fees; Allocation of Funds.	402(g)(4).
350.560(3)	Reclamation Fees; Allocation of Funds.	402(g)(4)(C).
350.553(1)	Certification; Completion of Coal Reclamation.	411(a).
350.553(2)	Certification; Eligible Lands, Waters, and Facilities.	411(b).
350.553(3)	Certification; Priorities.	411(c).
350.553(4)	Certification; Specific Sites and Areas not Eligible.	411(d).
350.553(5)	Certification; Utilities and Other Facilities.	411(e).
350.553(6)	Certification	411(f).
350.553(7)	Certification; Application of Other Provisions.	411(g).
350.597(2)	Reclamation Fee; Allocation of Funds.	402(g)(6).

Because the above revisions are identical in meaning to the corresponding provisions of SMCRA, the Director finds that Kentucky's rules are no less stringent than the Federal statute.

c. Revisions to Kentucky's Revised Statutes (KRS) Chapter 350 That Are Not Substantively Identical to the Corresponding Federal Statute (SMCRA)

a. Section 1 of SB–191 amended KRS 350.550(3) by adding a new subparagraph (d) which provides that the AML reclamation fund shall also consist of the interest credited to the fund pursuant to section 401(e) of Pub. L. 95–87 and allocated to the Commonwealth of Kentucky. The corresponding Federal provisions, set forth at section 401(b)(5) of SMCRA, similarly provide that the Abandoned Mine Land Reclamation Fund shall include interest credited to the fund under section 401(e) of SMCRA. The Director finds that the revision provides for the addition of such amounts to Kentucky's fund if an allocation is made to the Commonwealth, and does not establish a specific entitlement to such an allocation and, therefore, is no less stringent than the requirements of SMCRA.

b. Section 1 of SB–191 amends KRS 350.550(4) by adding at subparagraph (g) as one of the purposes for which the AML reclamation fund may be used, a reference to Section 507(c) of SMCRA relating to the Small Operator Assistance Program (SOAP). Section 402(g)(3)(A) of SMCRA provides for the expenditure of amounts available in the fund for the purpose of Section 507(c). The Director finds that Kentucky's addition at KRS 350.550(4) is no less stringent than the requirements of section 402(g) of SMCRA.

c. Section 2 of SB–191 amends KRS 350.560 by adding subsection (4) which provides for the use of funds, allocated to Kentucky by the Secretary of the Interior, in connection with protecting, repairing, replacing, constructing or enhancing facilities relating to water supply, including water distribution facilities and treatment plants, to replace water supplies adversely affected by coal mining practices. The new rule further provides that if the adverse effect occurred both prior to and after August 3, 1977, KRS 350.560 (1) and (2) will not be construed to prohibit use of funds for the purposes cited if the adverse effects occurred predominantly prior to August 3, 1977. This provision is similar to the rule contained in section 403(b) of SMCRA. However, the Federal rule provides for the expenditure of up to 30 percent of the funds allocated to the States in any year through grants made available under sections 402(g) (1) and (5) of SMCRA, while Kentucky's proposal refers to 30 percent of funds allocated through annual grants, without specific reference to sections 402(g) (1) and (5). The Director finds that since the only allocations currently received, or anticipated, by Kentucky are through grants made available under sections 402(g) (1) and (5) of SMCRA, the provisions of KRS 350.560(4) are no less stringent than the requirements of section 403(b) of SMCRA.

d. Section 2 of SB–191 amends KRS 350.560 by adding section (5) which provides that where the Governor has made a certification under KRS 350.553 and the Secretary of the Interior has concurred, the reclamation categories set forth at KRS 350.553(2) shall take effect, supplanting the categories set forth at KRS 350.560 (1), (2) and (4). The Director finds that KRS 350.560(5) is not inconsistent with the requirements of SMCRA and is approving the provisions of that rule with the understanding that Kentucky will deal with post-certification coal problems pursuant to the provisions of KRS 350.560 (1), and (2) and (4).

e. Section 4 of SB–191 amends KRS Chapter 350 by adding section 350.597(1) which provides that the Finance and Administration Cabinet shall establish a special trust fund which may receive and retain up to 10 percent of the total grants made annually by the Secretary of the Interior, pursuant to section 402(g)(6) and (7) of SMCRA. This provision is similar to the Federal provision set forth at section 402(g)(6) of SMCRA. However, the Federal provision refers to 10 percent of the total of the grants made annually under section 402(g)(1) and (5) of SMCRA whereas, Kentucky's proposal refers to 10 percent of the total grants made annually. The Director finds that since the only allocations currently received, or anticipated, by Kentucky are through grants made available under sections 402(g)(1) and (5) of SMCRA, the provisions of KRS 350.597(1) are no less stringent than the requirements of section 402(g)(6) of SMCRA.

IV. Summary and Disposition of Comments

Public Comments

The public comment periods and opportunities to request a public hearing were announced as follows: (1) For the submission dated June 24, 1992 (Administrative Record Number K–63), in the September 14, 1992, **Federal Register** (57 FR 41897); and (2) For the submission dated July 30, 1992 (Administrative Record Number KY–1171), in the September 23, 1992, **Federal Register** (57 FR 43952). The comment periods closed on October 14, 1992, and October 23, 1992,

respectively. No one requested an opportunity to testify at the scheduled public hearings so no hearings were held.

By letter dated October 14, 1992, the Kentucky Resources Council (KRC) filed comments regarding the revisions to Kentucky's AMLR Plan. The KRC stated that the narrative description of eligible lands and waters in Chapter 15, page 15–1, does not accurately reflect the two criteria for eligibility of post-Act abandoned mine lands for AML expenditures. In addition, the KRC feels that the paraphrasing of the purposes of Title IV of SMCRA as set forth in Chapter 3 of Kentucky's AMLR plan, does not accurately reflect the goals enumerated in 30 U.S.C. 1233.

As set forth in the Director's Findings section herein, the Director has reviewed Kentucky's submission and determined that the proposed revisions to Kentucky's AMLR plan are no less stringent than, nor inconsistent with, the requirements of SMCRA.

Agency Comments

Pursuant to section 503(b) of SMCRA and the implementing regulations of 30 CFR 732.17(h)(11)(i), comments were solicited from various government agencies with an actual or potential interest in the Kentucky program. The U.S. Forest Service, Bureau of Mines, Mine Safety and Health Administration, and Bureau of Land Management generally considered the amendment to be acceptable or submitted an acknowledgement with no comment.

V. Director's Decision

Based on the above findings, the Director is approving the program amendments to the Kentucky Abandoned Mine Land Reclamation Plan and the revisions to the Kentucky Revised Statute Chapter 350 as submitted by Kentucky on June 24, 1992, and July 30, 1992, respectively.

The Federal rules at 30 CFR part 917 codifying decisions concerning the Kentucky program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage the State to conform its program with the Federal standards without delay. Consistency of State and Federal standards is required by SMCRA.

EPA Concurrence

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the Environmental Protection Agency (EPA) with respect to any provisions of a State program amendment which relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). The Director has determined that this amendment contains no provisions in these categories and that EPA's concurrence is not required.

VI. Procedural Determinations

Executive Order 12291

On March 30, 1992, the Office of Management and Budget (OMB) granted the Office of Surface Mining Reclamation and Enforcement (OSM) an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions related to approval or disapproval of State and Tribal abandoned mine land reclamation plans and revisions thereof. Therefore, preparation of a regulatory impact analysis is not necessary and OMB regulatory review is not required.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State and Tribal abandoned mine land reclamation plans and revisions thereof since each such plan is drafted and adopted by a specific State or Tribe, not by OSM. Decisions on proposed State and Tribal abandoned mine land reclamation plans and revisions thereof submitted by a State or Tribe are based on a determination of whether the submittal meets the requirements of Title IV of the Surface Mining Control and Reclamation Act (SMCRA) (30 U.S.C. 1231–1243) and the applicable Federal regulations at 30 CFR parts 884 and 888.

National Environmental Policy Act

No environmental impact statement is required for this rule since agency decisions on proposed State and Tribal abandoned mine land reclamation plans and revisions thereof are categorically excluded from compliance with the National Environmental Policy Act (42 U.S.C. 4332) by the Manual of the Department of the Interior (516 DM 6, appendix 8, paragraph 8.4B(29)).

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 *et seq.*

Regulatory Flexibility Act

The Department of the Interior 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.*). The State submittal which is the subject of this rule is based upon Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements established by SMCRA or previously promulgated by OMS will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions in the analyses for the corresponding Federal regulations.

List of Subjects in 30 CFR Part 917

Intergovernmental relations, Surface mining, Underground mining, Abandoned mine land reclamation.

Dated: October 30, 1992.

David G. Simpson,

Acting Assistant Director, Eastern Support Center.

For the reasons set forth in the preamble, title 30, chapter VIII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 917—KENTUCKY

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

Authority: 30 U.S.C. 1201 *et seq.*

2. 30 CFR 917.15 is amended by adding a new paragraph (nn) to read as follows:

§ 917.15 Approval of regulatory program amendments.

* * * * *

(nn) The following amendments to Kentucky Revised Statutes (KRS) submitted to OSM on July 30, 1992, are approved effective December 17, 1992.

Amendments to KRS Chapter 350 sections 350.550, 350.553, 350.560 and 350.597 as contained in Senate Bill 191.

3. 30 CFR 917.21 is amended by adding a new paragraph (c) to read as follows:

§ 917.21 Amendment to approved Kentucky abandoned mine land reclamation plan.

* * * * *

(c) The following amendments submitted to OSM on June 24, 1992, are approved effective on December 17,

1992. The amendments consist of the following modifications to the Kentucky program:

Revisions to the following provisions of the Kentucky Abandoned Mine Land Reclamation Plan:

Chapter 3—Goals and Obligations

Chapter 15—Maps of Eligible Lands and Waters

[FR Doc. 92-30478 Filed 12-16-92; 8:45 am]
BILLING CODE 4310-05-M

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30 CFR Part 920

Maryland Regulatory Program; Small Operator Assistance Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing the approval of a proposed amendment to the Maryland regulatory program (hereinafter referred to as the Maryland program) approved under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment expands the coverage of Maryland's Small Operator Assistance Program (SOAP) and makes certain changes to Maryland's public notice and hearing regulations. The amendment revises the Maryland program to be no less effective than the corresponding Federal regulations.

EFFECTIVE DATE: December 17, 1992.

FOR FURTHER INFORMATION CONTACT: Robert Biggi, Director, Harrisburg Field Office, Harrisburg Transportation Center, 4th and Market Streets, suite 3C, Harrisburg, PA 17101; Telephone: (717) 782-4036.

SUPPLEMENTARY INFORMATION:

I. Background on the Maryland Program

On February 18, 1982, the Secretary of the Interior approved the Maryland program. Information regarding the general background on the Maryland program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Maryland program can be found in the February 18, 1982, **Federal Register** (47 FR 7214). Actions taken subsequent to the approval of the Maryland program are identified at 30 CFR 920.12, 30 CFR 920.15, and 30 CFR 920.16.

II. Submission of Amendments

By letter dated July 14, 1992, the Maryland Bureau of Mines (Maryland) submitted a program amendment to OSM (Administrative Record No. MD-556.00). The proposed amendment, House Bill Number 1284, revises section 7-505 of the Natural Resources Article of the Annotated Code of Maryland (the Code) by: (a) Increasing the SOAP coal eligibility limit for any surface coal mining operator from 100,000 tons to 300,000 tons; (b) modifying the State's public notice and hearing procedures; (c) deleting provisions for the amendment of a permit; and (d) referencing State and Federal pollution standards. The amendment also revises section 7-206 by specifying the bond release and reclamation responsibilities of Maryland's Land Reclamation Committee (the Committee).

OSM announced receipt of the proposed amendment in the September 11, 1992, **Federal Register** (57 FR 41712) and in the same notice opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The comment period closed on October 13, 1992.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.17, are the Director's findings concerning the proposed amendment submitted on July 14, 1992. Any revisions not specifically addressed below are found to be no less stringent than SMRA and no less effective than the Federal rules.

Revisions which are not discussed below revise cross-references and paragraph notations to reflect organizational changes resulting from this amendment.

Revisions to Maryland's Regulations that are Substantively Identical to the Corresponding Federal Regulations

State regulation	Subject	Federal counterpart
Maryland Annotated Code 7-505(c)(4).	Soap	SMCRA Section 507(c).

Revisions to Maryland's Regulations that are not Substantively Identical to the Corresponding Federal Regulations

Maryland is revising section 7-205 by transferring the provisions of paragraphs (b)(2) and (c) to paragraphs (A), (B), and (C) of section 7-206. The provisions of paragraphs (b)(2) and (c) have previously been approved.

Maryland is revising section 7-206(A) of the Code to require that the Committee approve a permit applicant's proposed reclamation plan. The Committee is required to publish a public notice in a newspaper of general circulation in the county of the proposed mining operation announcing receipt of a proposed reclamation plan. The public notice shall include certain identifying information and must announce that written comments and requests for a public informational hearing will be received by the Committee for at least 30 days after the newspaper publication. If a hearing is requested, the Committee is required to hold the meeting 15 to 60 days after it provides public notice. Written comments are to be accepted until the date of the hearing. The Committee is required to approve or reject the proposed plan after the hearing and notify the applicant, Department of Natural Resources (the Department), and participants of its decision.

The Federal regulations at 30 CFR 773.13 pertaining to public participation and 30 CFR 773.19(b) pertaining to notification procedures require the regulatory authority to provide public notice of a permit application and to notify the applicant of its decision regarding approval or disapproval of the permit. The permit application includes a reclamation plan. Maryland's currently approved implementing regulations at the Code of Maryland Administrative Regulations (COMAR) 08.13.09.04 pertaining to permit reviews are substantively identical to the Federal regulations at 773.13 and 773.19(b). In addition, Maryland is providing for separate public notice and hearing procedures for reclamation plans. There is no comparable requirement in SMCRA or the Federal regulations to provide for separate notice and hearing procedures for a reclamation plan. However, the Director finds the proposed revisions at 7-206(A) not inconsistent with the Federal regulations at 30 CFR 773.13 and 30 CFR 773.19(b).

Maryland is revising section 7-505(a) of the Code to delete the provision for amended permits. The Federal regulations at 30 CFR part 773 pertaining to permits do not provide for permit amendments. The Director finds the proposed deletion at section 7-505(a) does not render the Maryland program less effective than the Federal regulations.

Maryland is revising section 7-505(d) of the Code to require that the Department conduct a public

informational hearing if one is requested pertaining to an application for permit or permit revision. The current Maryland rules provide for a joint public hearing conducted by the Department and the Committee. The Department is required to grant, modify, or deny the application and notify the applicant and any participants of its decision in writing. The permit applicant has the burden of establishing the application's compliance with all applicable rules and regulations. The Federal regulations at 30 CFR 773.13(c) provide for informal conferences on permit applications. The Federal regulations at 30 CFR 773.15(a)(2) provides that the permit applicant shall have the burden of establishing the application's compliance with all requirements of the regulatory program. The Federal regulations at 30 CFR 773.19(b) provide for the written notification to the applicant by the regulatory authority of its decision to approve or disapprove a permit application. Maryland's currently approved implementing regulations at COMAR 08.13.09.04K (2) and (4) are substantively identical to the Federal regulations. The Director finds the proposed revisions at section 7–505(d) when considered along with COMAR 08.13.09.04K (2) and (4), no less effective than the Federal regulations at 30 CFR 773.13(c), 30 CFR 773.15(a)(2), and 30 CFR 773.19(b).

The provisions of paragraph (d)(5), with the exception of the last sentence, have been transferred to section 7–206(A)(4). The last sentence, which has been deleted, prohibits the Department from approving a permit or permit revision if the Committee rejects the plan. Because the Federal regulations at 30 CFR 773.15 pertaining to the review of permit applications do not include this requirement, the Director finds that the proposed deletion does not render the Maryland program less effective than the Federal regulations.

Maryland is revising section 7–505(f) to require that the operator be responsible for the prevention of stream pollution in excess of Federal or State standards. The current statute requires the operator to comply with standards established by the Department. The Federal rules at section 515(b) of SMCRA pertaining to environmental protection performance standards prohibit contributions of suspended solids to streamflow in excess of Federal or State requirements. The Director finds the proposed revision to section 7–505(f) no less effective than the Federal rule at section 515(b) of SMCRA.

Maryland is revising section 7–505(j) to require that the Director of the Bureau of Mines follow certain notification procedures if a permit application or permit revision is not approved. The current statute specifies the notification procedures for a permit application or amended application. The Federal regulations at 30 CFR 773.19(b) and 30 CFR 774.15(e) pertaining to notification procedures for permits and permit revisions require that the regulatory authority issue written notification of its decision to certain parties. The Director finds the proposed revision at section 7–505(f) no less effective than the Federal regulations at 30 CFR 773.19(b) and 30 CFR 774.15(e).

IV. Summary and Disposition of Comments

Public Comments

The public comment period announced in the September 11, 1992, **Federal Register** (57 FR 41712) ended on October 13, 1992. No public comments were received and a public hearing was not held as no one requested an opportunity to provide testimony.

Agency Comments

Pursuant to section 503(b) of SMCRA and the implementing regulations at 30 CFR 732.17(h)(11)(i), comments were solicited from various Federal agencies with an actual or potential interest in the Maryland program. The Department of the Interior, Bureau of Mines, the Department of Labor, Mine Safety and Health Administration, and the Department of Agriculture, Soil Conservation Service, all concurred without comment.

V. Director's Decision

Based on the above findings, the Director is approving the program amendment submitted by Maryland on July 14, 1992.

The Federal regulations at 30 CFR part 920 codifying decisions concerning the Maryland program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage states to bring their programs in conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

EPA Concurrence

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the Environmental Protection Agency with respect to any provisions of a State program amendment which relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). The Director has determined that this amendment contains no such provisions.

VI. Procedural Determinations

Executive Order 12291

On July 12, 1984, the Office of Management and Budget (OMB) granted the Office of Surface Mining Reclamation and Enforcement (OSM) an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions related to approval or conditional approval of State regulatory programs, actions and program amendments. Therefore, preparation of a regulatory impact analysis is not necessary and OMB regulatory review is not required.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of the Surface Mining Control and Reclamation Act (SMCRA) (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.13 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(c) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the

Paperwork Reduction Act, 44 U.S.C. 3507 *et seq.*

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 920

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 29, 1992.

David G. Simpson,

Acting Assistant Director, Eastern Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 920—MARYLAND

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

Authority: 30 U.S.C. 1201 *et seq.*

2. In § 920.15, a new paragraph (s) is added to read as follows:

§ 920.15 Approval of amendments to State regulatory programs.

* * * * *

(s) The following amendment submitted to OSM on July 14, 1992, is approved effective December 17, 1992. The amendment consists of the following modifications to the Maryland program:

(1) Revision of the following statutes of the Maryland Annotated Code:

7–505(a), (c), (d), (f), (j)—Permits.

(2) Addition of the following statute to the Maryland Annotated Code: 7–206—Reclamation Plan, Hearings.

(3) Deletion of the following statutes from the Maryland Annotated Code: 7–205(b)(2), (c)—Land Reclamation Committee.

7–505(d)(5)—Reclamation Plan.

[FR Doc. 92–30479 Filed 12–16–92; 8:45 am]

BILLING CODE 4319–05–M

DEPARTMENT 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 the 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 HAMPTON (SSN 767) 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 submarine. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: November 30, 1992.

FOR FURTHER INFORMATION CONTACT: Captain R.R. Rossi, JAGC, U.S. Navy, Admiralty Counsel, Office of the Justice 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 HAMPTON (SSN 767) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS: Rule 21(c), pertaining to the arc of visibility of the sternlight; Annex I, section 2(a)(i), pertaining to the height of the masthead light: Annex 1, section 2(k), pertaining to the height and relative positions of the anchor lights; and Annex 1, section 3(b), pertaining to the location of the sidelights. Full compliance with the above-mentioned 72 COLREGS provisions would interfere with the special functions and purposes of the 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.

Notice is also provided to the effect that USS HAMPTON (SSN 767) is a member of the SSN–688 class of vessels for which certain exemptions, pursuant to 72 COLREGS, Rule 38, have been previously authorized by the Secretary of the Navy. The exemptions pertaining to that class, found in the existing tables of § 706.3, are equally applicable to USS HAMPTON (SSN 767).

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.

§ 706.2 [Amended]

2. Table One of § 706.2 is amended by adding the following vessel:

Vessel	Number	Distance in meters of forward masthead light below minimum required height. Section 2(a)(i), Annex I
USS Hampton	SSN 767	3.5

3. Table Three of § 706.2 is amended by adding the following vessel:

Vessel	Number	Masthead light arc of visibility rule 21(A)	Side lights arc of visibility rule 21(B)	Stern lights arc of visibility rule 21(C)	Side lights distance inboard of ship sides in meters annex I section 3(b)	Stern lights distance forward of stern in meters rule 21(C)	Forward anchor lights height above hull in meters annex I section 2(k)	Anchor lights relationship of aft light to forward light in meters annex I section 2(k)
USS Hampton	SSN 767			209	4.3	6.1	3.4	1.7 below

Dated: November 30, 1992.

Approved:

W.L. Schachte, Jr.,

Rear Admiral, JAGC, U.S. Navy, Acting Judge Advocate General.

[FR Doc. 92-30543 Filed 12-16-92; 8:45 am]

BILLING CODE 3810-AE-M

32 CFR Part 706

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

AGENCY: Department of the 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 CAPE ST. GEORGE (CG 71) 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 cruiser. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: December 2, 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 CAPE ST. GEORGE (CG 71) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS, Annex I, section 3(a), pertaining to the location of the forward masthead light in the forward quarter of the ship, 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 cruiser. 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]

According, 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.

§ 706.2 [Amended]

2. Table Five of § 706.2 is amended by adding the following vessel:

Vessel	Number	Masthead lights not over all other lights and obstruction 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 Cape St. George	CG 71	N/A	X	X	38

Dated: December 2, 1992.

Approved:

W.L. Schachte, Jr.,

Rear Admiral, JAGC, U.S. Navy, Acting Judge Advocate General.

[FR Doc. 92-30548 Filed 12-16-92; 8:45 am]

BILLING CODE 3810-AE-M

32 CFR Part 706

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

AGENCY: Department of the 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 CHARLOTTE (SSN 766) 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 submarine. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: November 30, 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 CHARLOTTE (SSN 766) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS: Rule 21(c), pertaining to the arc of visibility of the sternlight; Annex I, section 2(a)(i), pertaining to the height of the masthead light; Annex 1, section 2(k), pertaining to the height and relative positions of the anchor lights; and Annex 1, section 3(b), pertaining to the location of the sidelights. Full compliance with the above-mentioned 72 COLREGS provisions would interfere with the special functions and purposes of the 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.

Notice is also provided to the effect that USS CHARLOTTE (SSN 766) is a member of the SSN–688 class of vessels for which certain exemptions, pursuant to 72 COLREGS, Rule 38, have been previously authorized by the Secretary of the Navy. The exemptions pertaining to that class, found in the existing tables of § 706.3, are equally applicable to USS CHARLOTTE (SSN 766).

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.

§ 706.2 [Amended]

2. Table One of § 706.2 is amended by adding the following vessel:

Vessel	Number	Distance in meters of forward masthead light below minimum required height. § 2(a)(i), Annex I
USS Charlotte	SSN 766	3.5

3. Table Three of § 706.2 is amended by adding the following vessel:

Vessel	Number	Masthead light arc of visibility rule 21(A)	Side lights arc of visibility rule 21(B)	Stern lights arc of visibility rule 21(C)	Side lights distance inboard of ship sides in meters annex I section 3(b)	Stern lights distance forward of stern in meters rule 21(C)	Forward anchor lights height above hull in meters annex I section 2(k)	Anchor lights relationship of aft light to forward light in meters annex I section 2(k)
USS Charlotte	SSN 766			209	4.3	6.1	3.4	1.7 below

Dated: November 30, 1992.

Approved:

W.L. Schachte, Jr.,

Rear Admiral, JAGC, U.S. Navy, Acting Judge Advocate General.

[FR Doc. 92–30545 Filed 12–16–92; 8:45 am]

BILLING CODE 3810–AE–M

32 CFR Part 706

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

AGENCY: Department of the 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 SPRINGFIELD (SSN 761) 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 submarine. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: November 4, 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 SPRINGFIELD (SSN 761) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS: Rule 21(c), pertaining to the arc of visibility of the sternlight; Annex I, section 2(a)(i), pertaining to the height of the masthead light; Annex 1, section 2(k), pertaining to the height and relative positions of the anchor lights; and Annex 1, section 3(b), pertaining to the location of the sidelights. Full compliance with the above-mentioned 72 COLREGS provisions would interfere with the special functions and purposes of the 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.

Notice is also provided to the effect that USS SPRINGFIELD (SSN 761) is a member of the SSN–688 class of vessels for which certain exemptions, pursuant to 72 COLREGS Rule 38, have been previously authorized by the Secretary of the Navy. The exemptions pertaining to that class, found in the existing tables of § 706.3, are equally applicable to USS SPRINGFIELD (SSN 761).

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.

§ 706.2 [Amended]

2. Table One of § 706.2 is amended by adding the following vessel:

Vessel	Number	Distance in meters of forward masthead light below minimum required height. § 2(a)(i), Annex I
USS Springfield.	SSN 761	3.5

3. Table Three of § 706.2 is amended by adding the following vessel:

Vessel	Number	Masthead light arc of visibility rule 21(A)	Side lights arc of visibility rule 21(B)	Stern lights arc of visibility rule 21(C)	Side lights distance inboard of ship sides in meters annex I section 3(b)	Stern lights distance forward of stern in meters rule 21(C)	Forward anchor lights height above hull in meters annex I section 2(k)	Anchor lights relationship of aft light to forward light in meters annex I section 2(k)
USS Springfield	SSN 761			205	4.2	6.2	3.5	1.7 below

Dated: November 4, 1992.

Approved:

W.L. Schachte, Jr.,

Rear Admiral, JAGC, U.S. Navy, Acting Judge Advocate General.

[FR Doc. 92-30544 Filed 12-16-92; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Baltimore, MD, Regulation 92-05-31]

Safety Zone Regulation: Upper Chesapeake Bay, Patapsco River, Elk River, C&D Canal, MD

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard Marine Safety Office Baltimore is establishing a temporary moving safety zone for the upper Chesapeake Bay, Elk River, Chesapeake and Delaware Canal (C&D Canal), Patapsco River and Ruckert Terminal Pier C, Baltimore, Maryland. The safety zone is necessary to protect vessels, the port community and the environment from potential safety and environmental hazards associated with the transit of a Liquefied Petroleum Gas (LPG) Vessel. This emergency rule provides explicit instructions for the LPG vessel and any vessels operating in the vicinity of the LPG vessel.

EFFECTIVE DATES: This regulation is effective from 8 a.m. December 15, 1992 to 12 a.m. December 17, 1992, unless terminated sooner by the Captain of the Port, Baltimore, MD.

FOR FURTHER INFORMATION CONTACT: Lieutenant (jg) Mark Williams, U.S. Coast Guard Marine Safety Office, Baltimore, U.S. Custom House, 40 South Gay Street, Baltimore, Maryland 21202-4022, (410) 962-5104.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rule making has not been published for this regulation and good cause exists for making it effective in less than 30 days from the date of publication in the **Federal Register**. Adherence to normal rule making procedures would not have been possible. Specifically, the vessel operator plans commencing said operations within 30 days of Coast Guard approval. Approval for this LPG facility was not granted until November 12, 1992, and the company's target operational start-up date is December 7, 1992. Publishing an NPRM and delaying the safety zone's effective date would be contrary to the public interest and immediate action is needed to protect the environment and mariners against potential hazards associated with the transit of a vessel transporting liquefied petroleum gas.

Drafting Information

The drafters of this regulation are LT (jg) Mark Williams, project officer for the Captain of the Port, Baltimore, Maryland, and Lieutenant Commander K.B. Letourneau, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulations

This safety zone includes a specific area around the LPG vessel while it is underway in a loaded or prepped condition, at anchor and during cargo or LPG transfer operations. The safety zone also will be in effect while the vessel, in a loaded condition transits the upper Chesapeake Bay to Ruckert Terminal, Pier C via the Patapsco river, to conduct LPG cargo tank cooling and preparations. Upon completion of tank preparation operations, the vessel will then transit the Patapsco River, Upper Chesapeake Bay, Elk River and then through the C&D Canal to the Sun Oil Company Refinery, Marcus Hook, Pennsylvania. This Safety Zone will extend 100 yards forward and aft of the vessel, and 50 yards on either side of the vessel while the vessel is underway. Additionally, no vessel may approach within 100 feet of the LPG vessel in a loaded or prepped condition while the LPG vessel is moored, nor anchor within 100 yards from the LPG vessel. These regulations are necessary to control all commercial and recreational traffic and to provide for the safety of life and property on navigable waters during the transit of the loaded or prepped LPG vessel. Since the main shipping channels will not be closed, the impacts on routine navigation are expected to be minimal.

Regulatory Evaluation

This final rule is not considered major under Executive Order 12291 and not significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The Coast Guard also considered the impact of this regulation on small entities and concluded that such impact is expected to be minimal. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b), that this regulation will not have a significant economic impact on a substantial number of small entities.

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 rule does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 165

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

Final Regulations

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

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

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

2. A temporary § 165.T0591 is added to read as follows:

§ 165.T0591 Moving Safety Zone: Chesapeake Bay, Elk River, C&D Canal, Patapsco River, Baltimore, Maryland.

(a) *Location.* The following area is a safety zone: While transiting the upper Chesapeake Bay, Patapsco River, Elk River, and C&D Canal, the waters surrounding the Liquefied Petroleum Gas vessel 100 yards forward and aft, 50 yards on either side of the vessel while underway, and transiting the bay, and 100 feet on all sides of the vessel while moored or at anchor, while the vessel contains Liquid Petroleum gas, either loaded or prepped.

(b) *Definitions.* The designated representative of the Captain of the Port is any Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port Baltimore, Maryland to act on his behalf. The following officers have or will be designated by the Captain of the Port: The Coast Guard Patrol Commander, the senior boarding officer on each vessel enforcing the safety zone and the Duty Officer at the Marine Safety Office Baltimore, Maryland.

(i) The Captain of the Port and the Duty Officer at the Marine Safety Office, Baltimore, Maryland can be contacted at telephone number (410) 962–5105.

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

(c) *Local Regulations.* (1) If the LPG vessel is in a loaded or prepped condition it may not transit if visibility is or is expected to be less than two (2) miles. If during the transit visibility becomes less than two (2) miles, the LPG vessel must seek safe anchorage and notify the COTP immediately.

(2) If during the transit of the loaded LPG vessel an emergency situation or navigational equipment problem occurs that affects the safety of the cargo or safe navigation of the vessel, the vessel must seek the nearest safe anchorage and notify the Captain of the Port, Baltimore, MD immediately.

(3) While in a loaded condition, the LPG vessel will be escorted by at least one commercial tug during any movement which occurs above the William Preston Lane Memorial Bridge (Bay Bridge).

(4) The LPG vessel will be escorted by at least one commercial tug during transit from the cargo terminal at Ruckert Terminal Pier C to the entrance to the C&D Canal.

(5) While moored, the LPG vessel must have at least two wire cable mooring lines (firewarps) rigged fore and aft on the outboard side of the vessel within six feet of the water's edge for emergency towing hook-up.

(6) While underway, the LPG vessel must have at least two wire cable mooring lines (firewarps) rigged fore and aft on the vessel within six feet of the water's edge for emergency towing hook-up should the need arise.

(7) Unless exempted by the COTP, the LPG vessel will be escorted by a Coast Guard escort vessel from the LPG Facility at Ruckert Terminal, Pier C, to the Francis Scott Key Memorial Bridge during the outbound transit. The Vessel will also be escorted by a Coast Guard vessel on its inbound transit, from the Francis Scott Key Memorial Bridge to the LPG Facility at Ruckert Terminal, Pier C, if in a loaded condition.

(8) All vessels operating within and approaching the safety zone must maintain a continuous radio guard on channels 13 and 16 VHF–FM while underway.

(9) Overtaking may take place only under conditions where the overtaking is to be completed well before any bends in the channel. Before any overtaking occurs, the pilots, masters and/or operators of both vessels must clearly agree on all factors including vessel speeds, time and location of overtaking.

(10) Above the C&D Canal, the LPG vessel and an oncoming vessel shall not meet at a relative speed greater than twenty (20) knots, or greater than prevailing weather conditions deem prudent. Meeting situations on river or severe channel bends shall be avoided.

(11) Except in times of emergency or with COTP permission, anchoring by the LPG vessel in other than approved anchorages is prohibited.

(12) Transfer of Liquefied Petroleum Gas at anchor or while bunkering is prohibited.

(13) To lessen the dangers of collision and decrease the effects of wake on the LPG vessel. The master, person in charge and/or pilot of the transiting vessel are responsible for ensuring passage at safe speed and should use vessel size and characteristics to determine the safe speed necessary to comply with this requirement. When the LPG vessel is moored at Ruckert Terminal, Pier C, all vessel's transiting this area shall operate at the minimum speed sufficient to maintain steerage.

(14) While at anchor or moored and experiencing periods of sustained winds in excess of 25 knots, but less than 40 knots, the LPG vessel must keep the main engine in a 5 minute standby condition. If sustained winds are 40 knots or over, the main propulsion plant must be on line.

(15) Venting of cargo vapors and inert medium while in the navigable waters of the United States is prohibited.

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

(i) Contact the LPG Vessel on VHF channels 16 or 13 for passing, meeting or overtaking instructions.

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

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

(iv) Any vessel may anchor outside of the regulated area specified in paragraph (2)(a) of this section, but may not block a navigable channel.

(17) Except for persons or vessels authorized by the Coast Guard Patrol Commanders, no person or vessel may enter or remain in the regulated area.

(d) *Effective Date:* This regulation is effective from 8 a.m. December 15, 1992 to 12 a.m. December 17, 1992, unless sooner terminated by the Captain of the Port, Baltimore, Maryland.

Dated: December 8, 1992.

R.L. Edmiston,

Captain, U.S. Coast Guard, Captain of the Port, Baltimore, Maryland.

[FR Doc. 92–30503 Filed 12–16–92; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IL 33–1–5347; FRL–4521–4]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Final rule.

SUMMARY: On June 26, 1987 (52 FR 24036), as corrected on July 31, 1987 (52 FR 28570), USEPA proposed in the alternative either to promulgate for Illinois federal rules for issuance of

construction permits to new and modified air pollution sources located in or affecting nonattainment areas in Illinois (New Source Review or NSR rules), or to approve draft NSR rules then in the process of being adopted by the State, with the understanding that prior to final approval by USEPA the State would complete adoption of the rules. Public comment was solicited on these proposed actions. On March 24, 1987, Illinois submitted to USEPA NSR rules which had been formally adopted by the State. This final rule approves the incorporation of the Illinois NSR rules into the State's SIP. This action also provides direct final approval of Illinois' existing Operating Permit program as satisfying USEPA's recently-adopted criteria regarding federal enforceability. Because USEPA considers this finding to be noncontroversial, it is being undertaken without prior proposal. Finally, this final rule also responds to public comment received on the proposal.

As a consequence of these actions, USEPA is lifting the growth moratorium in all primary nonattainment areas in Illinois which has been in effect since May 26, 1981, when the United States Court of Appeals for the Seventh Circuit overturned USEPA's earlier approval of NSR rules in *Citizens for a Better Environment* v. *United States*, 649 F.2d 522 (7th Cir. 1981).

DATES: These actions will be effective February 16, 1993 unless proper notice is received within 30 days that significant adverse or critical comments regarding USEPA's finding that the State's operating permit program satisfies federal enforceability criteria will be submitted. If such notice is received, timely notice will be published in the **Federal Register**, indicating that USEPA's approval of the federal enforceability aspects of the Illinois operating permit provisions is withdrawn. As is explained in more detail below, USEPA may also withdraw approval of the State's NSR regulations at the same time.

ADDRESSES: Copies of the requested SIP revisions, technical support documents and public comments received are available at the following address: United States Environmental Protection Agency (AR–18J), Region 5, Air and Radiation Division, Regulation Development Branch, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the regulations being incorporated by reference in today's rule are available for inspection at: Public Information Reference Unit, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Comments on this rulemaking should be addressed to: J. Elmer Bortzer, Chief (AR–18J), Regulation Development Section, Regulation Development Branch, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, IL 60604.

FOR FURTHER INFORMATION CONTACT: Ronald J. Van Mersbergen, (312) 886–6056.

SUPPLEMENTARY INFORMATION: On June 26, 1987 (52 FR 24036), as corrected on July 31, 1987 (52 FR 28570) (by publication of the text of the proposed Federal NSR promulgation which had been inadvertently omitted from the June 26, 1987 proposed rule), USEPA proposed to promulgate federal NSR rules for Illinois, or, in the alternative, to approve NSR rules drafted by the State, which the State was then in the process of adopting. USEPA proposed to condition approval of the State rules on the requirement that the final NSR rules submitted by Illinois be substantially the same as the State's NSR rules under consideration at the time of USEPA's proposed approval. Public comment was solicited on these proposed actions. Today's final rule responds to the public comments received, and approves for incorporation into the Illinois SIP the State's NSR rules, as finally adopted by the Illinois Pollution Control Board (IPCB) on March 24, 1988, and subsequently, submitted to USEPA. Since USEPA is approving the State NSR rules, it promulgates no federal rules.

At the time of USEPA's proposal, it was assumed by both the State and USEPA that in light of the decision in *Citizens for a Better Environment*, State operating permits issued by Illinois were, as a general proposition, "federally enforceable" for purposes of limiting a source's "potential to emit" under the NSR program. However, on June 28, 1989 (54 FR 27274), USEPA promulgated amendments to its NSR regulations. These amendments clarified the criteria which must be met by a state's operating permit program in order for the operating permit program to be approved by USEPA and incorporated into a SIP, under section 110 of the Clean Air Act (CAA).

Because of the way in which the Illinois NSR program is structured, approval of the State's operating permit program is a prerequisite to federal enforceability of any state operating permit. To assure that the operating permit program satisfies the new requirements, Illinois has submitted to USEPA for its approval, Illinois' previously-adopted regulations governing operating permits.

Since approval of Illinois' operating permit program has a direct bearing on any approval of its NSR rules, USEPA will address Illinois' operating permit program submissions first.

I. The Illinois Operating Permit Program

Background

The term "federally enforceable," defined at, e.g., 40 CFR 51.165(a)(1)(xiv), is a term of art under the NSR program that serves three principal purposes. First, a permit that is federally enforceable may be used to limit voluntarily the "potential to emit" of a new source so as to keep the source's emissions below the NSR major source applicability thresholds. Second, voluntary permit limits on the potential to emit of an existing major stationary source undertaking a modification can be used to prevent, through intra-source netting, increasing its emissions above the significance levels that would trigger a major modification. In either the first or second scenario, the source lawfully avoids the need to obtain a preconstruction permit under part D (or part C) of title I of the CAA. See, e.g., 40 CFR 51.165(a)(1)(iii). Third, if a new or modified source in a nonattainment area exceeds an applicability threshold and is subject to nonattainment NSR requirements, it must obtain external emissions offsets in accordance with sections 173(a)(1) and 173(c). The emissions reductions provided by the offsetting source must be federally enforceable in order to be creditable. 40 CFR 51.165(a)(3)(ii)(E).

Construction permits issued in accordance with a SIP-approved or USEPA-promulgated NSR program have always been considered federally enforceable. Such construction permit programs include the nonattainment NSR program applicable to major new sources and major modified sources located in nonattainment areas under part D of title I, see CAA sections 172(a)(5) and 173, and 40 CFR 51.165 and 40 CFR part 51, appendix S; the prevention of significant deterioration program applicable to major new sources and major modified sources located in attainment or unclassifiable areas under part C of title I, see CAA section 165, and 40 CFR 51.166 and 52.21; and the general or "minor source" NSR program applicable to the construction or modification of any stationary source under section 110 of title I without regard to whether the new source exceeds the statutory "major" source thresholds or to whether the modification exceeds the regulatory "significance" levels for "major"

modifications, see CAA section 110(a)(2)(C) (formerly 110(a)(2)(D), and 40 CFR 51.160–164.

Prior to the Clean Air Act Amendments of 1990, however, states were not required to have a distinct operating permit program under the Act. Until 1989, the requirements that must be met by a voluntary operating permit program to enable permits issued thereunder to be deemed federally enforceable for NSR purposes were uncertain. At that time, USEPA promulgated five criteria for approving a state operating permit program as part of the SIP. See 54 FR 27274, 27282 (June 28, 1989). The following discussion compares the Illinois regulations and procedures governing the State's operating permit program with these five criteria.

First Criterion

"The state operating permit program (i.e. the regulations or other administrative framework describing how such permits are issued) is submitted to and approved by EPA into the SIP."

On January 31, 1972 and April 4, 1979, IEPA submitted the regulations and administrative framework for supporting a permit review program to meet the requirements of 40 CFR 51.160 [51.18(j) at the time of submittal]. USEPA on May 31, 1972 (37 FR 10862) and February 21, 1980 (45 FR 11477) approved the program for issuing construction and operating permits to new sources, and modifications to sources. These permit review procedures have remained in effect in Illinois since that time. The State now desires to have that permit program approved for issuing operating permits to any existing source. Therefore, on September 18, 1991, the State submitted section 9(b) and section 9.1 of the State Environmental Protection Act (State Act) to supplement the earlier submittal. Since section 9(b) was incorporated into Illinois' SIP on May 31, 1972, USEPA is taking no action on section 9(b) in this rule. USEPA's approval of section 9.1 provides legal support for the operating permit program and satisfies the first criterion.

Second Criterion

"The SIP imposes a legal obligation that operating permit holders adhere to the terms and limitations of such permits (or subsequent revisions of the permit made in accordance with the approved operating permit program) and provides that permits which do not conform to the operating permit program requirements and the requirements of EPA's underlying regulations may be deemed not 'federally enforceable' by EPA."

Section 9(b) of the State Act says "No person shall * * * construct, install, or operate any equipment, facility, vehicle, vessel, or aircraft capable of causing or contributing to air pollution * * * without a permit granted by the Agency, or in violation of any conditions imposed by such permit."

Section 9(b) satisfies the initial part of the second approval criterion in that the operating permit holder is considered in violation of the State Act if he does not abide by the permit conditions. Section 9(b) furthermore comports with the definition "federally enforceable" found in 40 CFR part 165(a)(1)(xiv). This definition states that federal enforceability includes "operating permits issued under an EPA-approved program that is incorporated into the State Implementation Plan and expressly requires adherence to any permit issued under such program."

The latter part of the second approval criterion requires that the SIP has provisions which allow USEPA to deem a permit not "federally enforceable" under certain conditions. In approving the State operating permit program, USEPA is determining that Illinois' program allows USEPA to deem an operating permit not "federally enforceable" for purposes of limiting potential to emit and to offset creditability. Such a determination will (1) be done according to appropriate procedures, and (2) be based upon the permit, permit approval procedures or permit requirements which do not conform with the operating permit program requirements and the requirements of USEPA's underlying regulations. Based on this interpretation of Illinois program, USEPA finds that the second criterion for approving an operating permit program has been met by the State.

Third Criterion

"The State operating permit program requires that all emissions, limitations, controls and other requirements imposed by such permits, will be at least as stringent as any other applicable limitation or requirement contained in the SIP or enforceable under the SIP, and that the program may not issue permits that waive, or make less stringent, any limitation or requirement contained in or issued pursuant to the SIP, or that are otherwise 'federally enforceable' (e.g. standards established under sections 111 and 112 of the Act)."

With respect to issuing operating permits with limits less stringent than the SIP, section 39 of the Illinois Act which was incorporated into the Illinois SIP on May 31, 1972 (37 FR 10862) provides in pertinent part:

> When the Board [Illinois Pollution Control Board or IPCB] has by regulation required a permit for the construction, installation, or operation of any type of facility, equipment, vehicle, vessel, or aircraft, it shall be the duty of the Agency [Illinois Environmental Protection Agency] to issue such a permit upon proof by the applicant that the facility, equipment, vehicle vessel, or aircraft will not cause a violation of this Act or of regulations hereunder. The Agency shall adopt such procedures as are necessary to carry out its duties under this Section. In granting permits the Agency may impose such conditions as may be necessary to accomplish the purposes of this Act, and as are not inconsistent with the regulations promulgated by the Board hereunder * * *

Since State-issued operating permits must comport with all State regulations, which would include the regulations adopted to implement the SIP, the State cannot issue operating permit limits less stringent than the regulations in the SIP. Furthermore, section 9.1 of the Illinois Act which is being incorporated into the SIP today clearly indicates that "It is the purpose of this section to avoid the existence of duplicative, overlapping or conflicting State and Federal regulatory systems". USEPA interprets this language to mean that both the IEPA and IPCB must act in a manner consistent with all pertinent federal statutes and regulations including the SIP. In addition, section 201.160 of Subpart D: Permit Applications and Review Process of Part 201 of Title 35 of the Illinois Administrative Code which was incorporated into the Illinois SIP as Rule 103(b)(6)(A–F) on February 21, 1980 (45 FR 11477) provides that:

> No operating permit shall be granted unless the applicant submits proof to the Agency that:
>
> (A) The emission source or air pollution equipment has been constructed or modified to operate so as not to cause a violation of the Act [Illinois Environmental Protection Act] or of this Chapter [Chapter 1: Pollution Control of Title 35 of the Illinois Administrative Code], or has been granted a variance therefrom by the Board and is in full compliance with such variance, and * * *
>
> It should be noted that Chapter 1 contains the State rules that comprise the SIP.

Section 9.1 d.2 of the State Act, which becomes part of the approved SIP by today's action, states that "no person shall * * * construct, install, modify, or operate any equipment, building, facility, source or installation which is subject to regulation under sections 111, 112, 165, or 173 of the Clean Air Act except in compliance with the requirements or such sections and federal regulations adopted pursuant thereto, and no such action shall be

undertaken without a permit granted by the Agency or in violation of any condition imposed by such permit. Any denial of such a permit or any conditions imposed in such a permit shall be reviewable by the Board in accordance with section 40 of the Act."

Section 9.1 d.2 thus requires that State permits comply with the provisions of the CAA and federal regulations adopted pursuant to the CAA. To issue a permit with a limit less stringent than federal requirements or a State SIP rule is not allowed by the State Act. Permits reviewable by the IPCB in accordance with section 40 can only have their limits changed if the IPCB finds that IEPA has made an error. Section 40 does not have provisions which allow altering emission limits other than to correct clerical error by the IEPA. There is no authority in section 40 of the State Act to grant a waiver from a permit limit. Based on these provisions, USEPA has determined that the State authority to grant permits is properly restrained by the terms of the SIP, as required by the third criteria.

Fourth Criterion

"The limitations, controls, and requirements in the operating permits are permanent, quantifiable and otherwise enforceable as a practical matter."

USEPA has reviewed the Illinois operating permit program and is satisfied that it requires the state to issue permits which meet the requirements of this provision. While the permits do expire the conditions they impose must be complied with during the entire term of the permit as well as during the transition to a renewal permit. Section 9.1(f) of the State Act states that, "if a complete application for a permit renewal is submitted to the Agency at least 90 days prior to expiration of the permit, all of the terms and conditions of the permit shall remain in effect until final administrative action has been taken on the application." This provision of the State Act uses language similar to the federally proposed title V operating permit rules which are intended to provide permanency to the limits in title V permits, which have expiration dates. This approach to making permit limits permanent is thus approvable by USEPA.

Illinois' permit conditions are characteristically written so that they are quantifiable and enforceable as a practical matter. Limits and averaging times are consistent with test methods and procedures. If USEPA in the future determines that an individual permit condition is not quantifiable or practically enforceable, it can deem the permit not "federally enforceable" within the means of the NSR regulations. The State's current practice and regulatory provisions meet the fourth criterion for permit program approval.

Fifth Criterion

"The permits are issued subject to public participation." This means that the State agrees, as part of its program to provide USEPA and the public with timely notice of the proposal and issuance of such permits, and to provide USEPA, on a timely basis, with a copy of each proposed (or draft) and final permit intended to be federally enforceable. This process might also provide for an opportunity for public comment on the permit application prior to the issuance of the final permit.

On September 25, 1985, USEPA approved Illinois' rules governing public participation in the air permit program for major sources in nonattainment areas. These rules provide for public notification prior to permit issuance and an opportunity for public comment.

The public comment procedure and commitments to follow them in issuing operating permits which were submitted by IEPA, are approvable as meeting the fifth criterion.

In the preamble to the regulations that USEPA promulgated on June 28, 1989 (54 FR 27274), which set forth the five criteria outlined above for a federally enforceable operating permit program, USEPA indicated that it would "consult with States on methods by which existing operating permits could be made federally enforceable under a subsequently approved State operating program." (54 FR 27284). The preamble then went on to suggest two possible means of securing USEPA approval of previously issued permits—either submitting the permits in bulk to USEPA as a SIP revision or reissuing existing permits on a source by source basis. *Id.* These two options were not intended to be a complete list of alternatives. Rather they were suggested as two possible ways by which a state could make previously issued operating permits federally enforceable. Because both options could require the State to spend considerable resources in reprocessing otherwise valid operating permits, the USEPA has evaluated additional approaches. The USEPA today finds the existing Illinois SIP regulations to be consistent with federal requirements. If the State followed its own procedures, each permit issued under this regulation was subject to public notice and comment and prior USEPA review. Therefore, USEPA will consider all operating permits issued which were processed in a manner consistent with both the State regulations and the five criteria to be federally enforceable with the promulgation of this rule provided that any permits that the State wishes to make federally enforceable are submitted to USEPA and accompanied by documentation that the procedures approved today have been followed. USEPA will expeditiously review any individual permits so submitted to ensure their conformity to the program requirements.

Today's approval of the State's operating permit program for the purpose of issuing federally enforceable operating permits is intended as a mechanism for making the operating permits used to implement the requirements of the Act, including section 110 and part D of title I federally enforceable. After the effective date of this rule, operating permits issued by Illinois in conformance with the five criteria listed above will be considered federally enforceable. Additionally, operating permits issued subsequent to the incorporation of the Illinois operating permit program into the SIP but before the effective date of this rule will also be considered federally enforceable if the State submits them to USEPA along with documentation that they were issued in conformance with the five criteria listed above.

Prior to the 1990 Amendments of the Act, there was no express federal requirement for a SIP to include an operating permit program. Only a construction permit program was directly required. However, Illinois and many other states voluntarily included an operating permit program in their SIPs to assist them in regulating emission sources. The Illinois operating permit program covers all emission sources regardless of the source's potential to emit. In contrast, all states are required by title V of the Act Amendments of 1990 to adopt and submit to USEPA an operating permit program by November 15, 1993, regulating the following: Major sources, sources subject to a hazardous air pollutant standard under section 112 of the Act, sources subject to new source performance standards under section 111 of the Act, sources affected under the acid rain provisions of title V of the Act, sources required to have a preconstruction review permit pursuant to the prevention of significant deterioration (PSD) or NSR program under title I of the Act. In addition, USEPA may add or exempt from the title V permitting program any other

non-major sources in a category designated by USEPA upon performing appropriate rulemaking.

USEPA will go through rulemaking on Illinois' title V permit program after it has been received from the State. Today's rule has no bearing on Illinois' obligation to adopt an operating permit program meeting the requirements of title V by November 15, 1993. Although states may well choose to develop title V permit programs that address more sources than the population mandated by the Act and USEPA's implementing regulations in 40 CFR part 70, it is probable that states will continue to permit some sources pursuant to operating permit programs approved into the SIP, such as the one developed by Illinois. This is because states may prefer to permit smaller and less significant sources pursuant to such programs, rather than the somewhat more extensive title V program requirements. The USEPA recognizes that such program can be a useful supplement to the title V program in carrying out the goals of the Act. Accordingly, the USEPA wishes to confirm that it will continue to review state operating permit programs pursuant to the criteria in the June 28, 1989 **Federal Register** referenced above.

II. The Illinois New Source Review Rules

Changes From Draft Rules to Final NSR Rules

A. The draft, at § 203.107, under the definition of "allowable emissions", paragraph (a)(1), stated that part of allowable emissions is "the applicable standards set forth in 40 CFR part 60 or 40 CFR part 61." The final rule for this paragraph states that part of allowable emissions is "any applicable standards adopted by USEPA pursuant to section 111 and 112 of the Clean Air Act (42 U.S.C. 74011 et. seq.) and made applicable in Illinois pursuant to section 9.1(b) of the Environmental Protection Act." Section 9.1 makes all New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPS) enforceable in Illinois by the State. (There is further discussion in item II.E. of the definition of Lowest Achievable Emission Rate (LAER)). Therefore, it is concluded that this change is nonsubstantive and does not change the form of the draft rules as proposed by USEPA.

B. In 203.112, the State exchanged the word "or" for "and" in identifying the terms " 'building', 'structure', 'facility' " so that the final rule has the phrase " 'building', 'structure', and 'facility' ". In the way these terms are used to define "stationary source" in the regulations (section 203.136), there is no substantive change in meaning; the exchange of words only adds clarification and does not change the form of the draft rules as proposed by USEPA.

C. The earlier definition of the terms " 'building', 'structure', and 'facility' " in section 203.112(b)(1), referring to materials being transferred, was supplemented with the following language, "irrespective of ownership or industrial grouping." This wording adds clarity to the concept that the materials being transferred should be part of a "building, structure and facility." USEPA has determined that this is not a substantive change in the definition and does not change the form of the draft rules as proposed by USEPA.

D. The final State rule added a definition of "Nonattainment Area" in section 203.127 which was not in the draft rule as proposed by USEPA. The definition simply says a nonattainment area is an area which is so designated under the CAA. Since the State did not have a definition of "nonattainment area" in its draft NSR rules, the only definition in existence during the public comment period was the federal definition. Since this addition is no more than an inclusion of that which was already in existence as federal law, it does not constitute a substantive change, and does not change the form of the draft rules as proposed by USEPA.

E. The definition of "LAER," as it appears in section 203.301, adds the following language: "In no event shall the application of this term permit a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under an applicable new source performance standard adopted by USEPA pursuant to section 111 of the Clean Air Act and made applicable in Illinois pursuant to section 9.1 of the Act." (Section 9.1 of the Act refers to the Illinois Environmental Protection Act).

The phrase "and made applicable in Illinois pursuant to section 9.1 of the Act" may appear to limit the minimum level of LAER in some cases to action by Illinois. However, this is not the case. Section 9.1.b reads as follows: "The provisions of section 111 of the Federal Clean Air Act (42 U.S.C. 7411), as amended, relative to standards of performance for new stationary sources * * * are applicable in the State and are enforceable under this Act." USEPA interprets this to mean that any NSPS promulgated by the Administrator are immediately enforceable by the State of Illinois. Based on this understanding we are approving the definition of LAER.

F. In the final version of the rules in section 203.303(c)(1), the following language is added: "and made applicable in Illinois pursuant to section 9.1 of the Environmental Protection Act."

As discussed in E above, this language only recognizes in the NSR rules the incorporation by reference of Federal Standards promulgated pursuant to sections 110 and 111 of the Clean Air Act. This is not considered a substantive change, and does not change the form of the draft rules as proposed by USEPA.

G. The following language is added to the earlier draft rule in section 203.303(d)(1): "Effective stack height means actual stack height plus plume rise. Where actual stack height exceeds good engineering practice, as determined pursuant to 40 CFR 51.100 (1987) (no future amendment or edition are included), the creditable stack height shall be used."

This language merely confirms that the State NSR rules will follow stack height requirements established by USEPA in 1987. (see 52 FR 24712, July 1, 1987.) This is considered clarifying language, not a substantive change, and does not change the form of the draft rules as proposed by USEPA.

Major Features of the State Rule

A. Federal Enforceability

The term, "Federally enforceable" in 40 CFR 51.165(a)(1)(xiv) "means all limitations and conditions which are enforceable by the Administrator, including any permit requirements established pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR part 51, subpart I, including operating permits issued under an EPA-approved program that is incorporated into the state implementation plan and expressly requires adherence to any permit issued under such program." The term "permit" in State rule section 203.303(b)(5) includes only construction and operating permits. As this has been discussed, State construction permits have been made federally enforceable by an earlier program approval pursuant to 40 CFR part 51 subpart I (see 37 FR 10862, May 31, 1972 and 45 FR 11472, February 21, 1980). State operating permits will today be made federally enforceable by USEPA's approval of the State operating permit program. Section 9(b) of the State Act prohibits a person from violating any condition imposed by such a permit.

As discussed above, the provisions of 40 CFR 51.165 require federal enforceability in three matters, (1)

providing offsets, (2) defining potential to emit, and (3) providing creditable emission reductions for netting. Also, the term "federally enforceable" is mentioned in two other areas in the federal regulations (in the definition of allowable emissions and in the definition of major modification). The absence of the federally enforceable language from these areas in the State rules does not make the State rule less stringent than the federal requirement. For instance, State rule section 203.303, Baseline and Emission Offsets Determination, uses the term "enforceable by permit condition" to make an offset enforceable. All such offsets are federally enforceable since all of the permits in question are issued pursuant to USEPA-approved permitting programs and thus are federally enforceable. Specifically, the State construction permit program has been approved and the State operating permit program is approved in today's action.

In sections 203.107 (Allowable Emissions), 203.128 (Potential to Emit), and 203.208 (Net Emission Determination), the State uses the term "enforceable" and not "federally enforceable". USEPA discussed the interpretation of these terms with the State as they impact federal enforceability. The State clarified its interpretation of these terms in a February 27, 1992, letter from Bharat Mathur, Chief, Bureau of Air, IEPA to David Kee, Director, Region V, Air and Radiation Division, USEPA, which is part of the administrative record. The clarification, which is an express part of today's approval, indicates that Illinois interprets these terms so that federal enforceability is maintained. USEPA is, therefore, able to approve these sections.

B. Dual Source Definition

The State rule has a "dual definition of source" in contrast to a plantwide definition. The term "stationary source" as defined in section 203.136 includes any building, structure, facility or installation. The terms building, structure and facility are each defined in section 203.112 as encompassing all emitting activities at a plant, while the term "installation" in section 203.125 specifies identifiable pieces of equipment. Stationary source is defined in two ways (1) as all activities of a plant (plantwide) and (2) as each activity of a plant considered separately.

C. Vessel Emissions

The Illinois regulation section 203.112 defines source to include all activities of vessels and other conveyances transferring materials to and from a source as part of the source, irrespective of ownership or industrial grouping. This definition does not conflict with the implementation of the January 17, 1984, District of Columbia Court of Appeals remand of the Federal vessel emission rules to USEPA for further consideration. See *Natural Resources Defense Counsel* v. *USEPA* 725 F.2d 761 (C.A.D.C. 1984).

D. Stack Height

The June 26, 1987, **Federal Register** Notice proposing to approve the Illinois NSR rules indicated that the USEPA would not approve a NSR rule until the State's stack height rule is approved as a SIP revision. USEPA approved the Illinois stack height rule on August 14, 1989 (54 FR 32073).

E. Growth Allowance

USEPA is approving the definition of "available growth margin" in section 203.110 with the understanding that there is at present no growth allowance incorporated in the SIP. Any growth allowance that Illinois may seek to have incorporated in the SIP in the future must comply with the Clean Air Act and the USEPA policy. The Clean Air Act Amendments (CAAA) of 1990 restrict where new allowances may be established. Revised sections 172(c)(4) and 173(a)(1)(B) limit new growth allowances to only those portions of a nonattainment area which have been formally targeted for economic growth by the Administrator, in consultation with the Secretary of Housing and Urban Development.

IV. Public Comments

There were several comments on the proposed rule approval of June 26, 1987, and July 31, 1987. Those comments which relate specifically to the proposed approval of the State promulgated rule are addressed here.

A. Comment: One commenter felt that USEPA should have provided clearer guidance to the State with respect to vessel emissions, by recommending that stack emissions from vessels not be included in those attributed to a stationary source.

USEPA Response: As discussed above in III.C Vessel Emissions, USEPA recommendations to the State during the public comment period and regulation development period related only to the approvability of the State's proposal in light of the remand of the Federal vessel emission rules to USEPA by the District of Columbia Circuit Court of Appeals. Because USEPA's rules had been remanded, USEPA was unable at that time to state whether or not the forthcoming rules would require that vessel emissions be included in emissions attributed to a stationary source. USEPA was only able to advise the State that it could approve a rule which attributed vessel emissions to a stationary source.

B. Comment: The Ohio air pollution control agency encouraged the approval of the State promulgated rule rather than a federally promulgated rule because section 101(a)(3) of the CAA places the primary responsibility of controlling air pollution at the state level. The State encouraged the lifting of sanctions as rapidly as possible.

USEPA Response: None required.

C. Comment: IEPA made two comments with respect to the State promulgated rule. First, it fully supports federal approval of the rule. Second, it indicates that the IPCB changed from a plant-wide definition in its draft rule to the dual source definition in the final rule after USEPA indicated that, "while USEPA intended to propose the plant-wide definition, it could not state with certainty that it could in fact finally adopt that definition."

USEPA Response: USEPA is responding to this comment because of the potential inference that USEPA is promoting the dual source definition of source. This advice was provided to the State prior to the finalization of a policy under development for the approval of plant-wide definitions and during a time when the proposed approvals of plant-wide definitions were threatened with law suits. At that time, the dual source definition was clearly approvable under provisions of the CAA which allow a State to adopt more stringent requirements than those required to meet the federal NSR requirements. However, since that time, many jurisdictions have adopted the plant-wide definition after USEPA successfully defended the plant-wide definition in *Chevon U.S.A.* v. *Natural Resources Defense Council Inc.* 407 US 837 1984. Further the CAAA of 1990 endorse the plant-wide definition. For example, section 182(c)(6) provides that the new source review provisions shall ensure that increased emissions of volatile organic compounds shall not be considered de minimis for purposes of determining permit requirement applicability unless the increase aggregated with all other net increases in emissions from the source over any period of five consecutive calendar years including the year in which the increase occurred is less than 25 tons. Thus, while Illinois remains free to adopt a dual source definition, that provision is not required by USEPA for approval of SIP revisions.

D. Comment: A group of Illinois industries asserted a preference for the plant-wide definition and opposed the Illinois promulgated rule with the dual source definition. The group reasoned that the plant-wide definition encouraged modernization more than the dual source definition would. Therefore, the air quality standards would be met faster and reasonable further progress would be maintained more easily.

USEPA Response: Because these commentors provided no evidence to support their contentions, USEPA need not respond to their claim that plant-wide definition is better for the environment. The dual source definition remains approvable under the federal regulations, so Illinois' submittal may be approved.

E. Comment: The State of Wisconsin opposes the lifting of sanctions in Illinois because it believes that section 110(a)(2)(i) of the CAA requires sanctions if the SIP does not meet the requirements of Part D. Wisconsin offers the following as proof that Part D requirements are not met: (1) the USEPA on July 14, 1987, proposed to disapprove the Illinois ozone SIP; (2) section 172(b)(8) requires emission limits, schedules of compliance and such other measures as may be necessary to meet the requirements of section 172, however, USEPA has not approved the SIPs for ozone, carbon monoxide, sulfur dioxide; and (3) with respect to section 172(b)(4), which requires a current emission inventory, the State of Illinois only updates one-fourth of its inventory of sources a year.

USEPA Response: It is USEPA's position that the construction ban was imposed specifically for the lack of an approvable NSR rule. Under the CAAA of 1977, section 110(a)(2)(I) of the statute required USEPA to place certain nonattainment areas under a federally imposed construction ban where the State failed to have an implementation plan meeting all of the requirements of part D of the CAA. The 1990 CAAA contains a Savings Clause in section 110(n)(3) that preserves certain existing 110(a)(2)(I) construction bans in place at passage, including bans imposed by virtue of a finding that the State did not have an adequate NSR permitting program as required by section 172(b)(6) of the 1977 CAAA. All other construction bans imposed pursuant to section 110(a)(2)(I) (except in SO_2 nonattainment areas) are lifted as a result of the new statutory provision. Thus, the 1990 CAAA does not impose categorically any new construction ban for failure to attain the NAAQS or failure to satisfy the 1977 CAAA requirements. Instead, the 1990 CAAA creates new schedules for meeting new planning and attainment requirements. If Illinois fails to meet these new deadlines, it will force certain statutorily-mandated sanctions—including higher offset ratios and loss of highway construction appropriations. Construction bans are no longer appropriate for the failure to achieve attainment or to comply with the attainment planning requirements. Accordingly, since USEPA is today approving NSR rules, the existing construction ban can be lifted.

While USEPA is today lifting this general construction ban, USEPA retains authority to impose a partial or complete construction ban should Illinois issue permits in a manner inconsistent with the NSR requirements of the CAAA.

The CAAA require Illinois to submit revised NSR nonattainment area plans by certain dates. The NSR plan for sulfur dioxide nonattainment areas which was due May 15, 1992, has not been submitted. The State's NSR particulate matter (PM) plan which is due June 30, 1992, has not been received. Revisions for ozone nonattainment areas are due November 15, 1992. As the deadlines for the submittal of NSR nonattainment area plans pass, USEPA will act on the State's submittals or lack thereof in a separate administrative action. USEPA may consider taking action under section 113(a)(5) if the State issues a major NSR permit in a nonattainment area without further updating the corresponding NSR plan to reflect the new requirements. See General Preamble, April 16, 1992 (57 FR 13498), at 13555–6.

F. Comment: Wisconsin commented that Illinois' NSR program is deficient because it does not have provisions which will ensure that construction or modification of minor sources will not interfere with attainment or maintenance of a national standard in nonattainment areas.

USEPA Response: The Illinois SIP revisions approved today provide adequate safeguards to protect the NAAQS from emissions increases associated with minor source growth. First, Illinois has a new source review program applicable to minor new sources and minor modifications that is included in the SIP pursuant to the requirement in CAA section 110(a)(2)(C) and 40 CFR 51.160 that all states adopt a permit or similar program to regulate the construction or modification of any stationary source. Section 201.142 of the Illinois regulations requires, as part of minor source preconstruction review, an assessment of the air quality impact of the new or modified minor source, and a prohibition against permit issuance where it would interfere with attainment of the NAAQS. In addition, section 203.302(a), obligates the State to secure offsets from new and modified major sources sufficient to assure reasonable further progress taking into account minor source growth. Finally, USEPA requires States to account for minor source growth as part of the State's attainment demonstration. See, e.g., General Preamble, 57 FR 13498, 13508 (April 16, 1992). The USEPA will thus have an opportunity to review and approve the State's strategy for countering any minor source growth as part of USEPA's approval of the attainment plan.

G. Comment: Wisconsin indicated that Illinois does not provide adequate public comment for minor sources and, therefore, the SIP is deficient and continuation of construction ban is required.

USEPA Response: Wisconsin's charge that Illinois fails to provide an adequate opportunity for public comment on all of its minor source permits does not require USEPA to continue the construction moratorium. The CAAA largely eliminated construction bans imposed by USEPA prior to passage of the 1990 Amendments. A saving clause, section 110(n)(3) of the CAAA, retains construction bans imposed by USEPA for the failure, *inter alia*, to submit a NSR permitting plan as required by section 172(b)(6) (now section 172(c)(5)) of the CAAA. As discussed, this is the type of construction ban now in effect in Illinois. Under section 110(n)(3), the ban only continues until the Administrator finds that the SIP of the area includes the NSR permitting requirements set forth in section 172(c)(5). That provision requires a NSR permitting program for the "construction and operation of new or modified *major* stationary sources anywhere in the nonattainment areas." (Emphasis added) By today's action, USEPA is approving a NSR permitting program for major stationary sources that satisfies section 172(c)(5). It is buttressed by a federally enforceable, minor source permitting program applicable to minor new sources and minor modifications to existing sources that affords public notice and comment for most minor source permits, including all synthetic minor permits [1]

[1] Synthetic minor permits are permits of sources whose potential to emit would subject them to prevention of significant deterioration (PSD) requirements but who chose to limit their potential to emit through an operating restriction or emission controls to escape PSD requirements.

and minor source permits that involve netting, the minor source permits most relevant to the major source program. Because USEPA today finds that Illinois has adopted an adequate NSR permitting program for major stationary sources, USEPA must comply with 110(n)(3) and lift the previously-existing construction ban. However, USEPA will continue to review Illinois' minor source permitting program as it is applied to all minor sources to ensure that it meets the requirements of USEPA regulations, including the public participation requirements set forth in 40 CFR 51.161.

V. Final Rulemaking Actions

1. After consideration of the material submitted by the State of Illinois which supplemented the permit program which was approved for the construction and operation of new sources and new modifications, USEPA has determined that State regulations and procedures are approvable in accordance with the five criteria published in the June 28, 1989, **Federal Register** for an operating permit program. USEPA approves the incorporation of this program into the SIP for the purpose of issuing federally enforceable operating permits. Therefore, emission limitations and other provisions contained in operating permits issued by the State in accordance with the applicable Illinois SIP provisions, approved herein, shall be federally enforceable by USEPA, and by any person in the same manner as other requirements of the SIP.

2. For the reasons stated above, and in consideration of the public comments received in response to the proposed rulemaking, USEPA approves the incorporation of the Illinois NSR rules into the SIP. These rules are contained in Illinois Administrative Code, Title 35 Environmental Protection, Subtitle B: Air Pollution, Chapter 1: Pollution Control Board, Part 203: Major Stationary Sources Construction and Modification.

3. As a consequence of the two rulemaking actions listed above, USEPA is lifting the growth moratorium in all primary nonattainment areas which has been in effect since May 26, 1981, when the United States Court of Appeals for the Seventh Circuit overturned USEPA's earlier approval of the NSR rules for Illinois on State law procedural grounds in *Citizens for a Better Environment* v. *United States* 649 F.2d 522 (7th Cir. 1981).

Because USEPA considers the approval of the Illinois operating permit program as satisfying the 1989 federally enforceable criteria to be noncontroversial, it is approving Illinois' operating permit program today without prior proposal. This action will be effective (60 days from the date of publication) unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted bearing solely on this finding, that the operating permit program satisfies the 1989 federally enforceable criteria.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective on February 16, 1993.

USEPA believes that federal enforceability of the State's operating permit program is a necessary requirement for federal approval of the States' NSR rules. Therefore, if USEPA withdraws its finding regarding the State's operating permit program it will also withdraw its approval of the NSR rules unless a suitable mechanism for ensuring federal enforceability of offset and other NSR requirements can be identified. Final rulemaking on the State's NSR rules thus may be held in abeyance until final rulemaking is taken on the operating permit program.

Similarly, USEPA cannot lift the growth moratorium in all primary nonattainment areas until the NSR rules are approved for incorporation in the SIP. Therefore, USEPA will withdraw its rulemaking lifting the growth moratorium if it withdraws its approval of the NSR rules. The growth moratorium will not be lifted until USEPA approves the incorporation of NSR rules into the SIP.

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 CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 16, 1993. 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.

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

Dated: September 29, 1992.

William K. Reilly,

Administrator.

For the reasons set out in the preamble, part 52, title 40 of the Code of Federal Regulations is amended.

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.

Subpart O—Illinois

2. Section 52.720 is amended by adding paragraphs (c)(84) and (c)(85) to read as follows:

§ 52.720 Identification of plan.

* * * * *

(c) * * *

(84) On September 18, 1991, and November 18, 1991, the State submitted documents intended to satisfy federal requirements for an operating permit program which can issue federally enforceable operating permits.

(i) Incorporation in Reference.

(A) Public Act 87–555, an Act to amend the Environmental Protection Act by changing section 9.1, effective September 17, 1991. (Ch. 111 1/2, par. 1009.1) par. 1009.1(a), (b), (c), (d) and (f).

(85) On March 24, 1988, the State submitted rules for issuance of construction permits to new and modified air pollution sources located in or affecting nonattainment areas (New Source Review rules).

(i) Incorporation by reference.

(A) Illinois Administrative Code, Title 35 Environmental Protection, Subtitle B: Air Pollution, Chapter 1: Pollution Control Board, Part 203: Major Stationary Sources.

3. Section 52.736 is revised by removing and reserving paragraph (a) and adding paragraph (b).

§ 52.736 Review of new sources and modifications.

(a) [Reserved]

(b) The rules submitted by the State on March 24, 1988, to satisfy the requirements of the Clean Air Act are approved. These rules are part 203: Major Stationary Sources Construction

and Modification as effective March 22, 1991. The moratorium on construction and modification of new sources in nonattainment areas as provided in section 110(a)(2)(I) of the Clean Air Act is revoked.

4. Section 52.737 is added to read as follows:

§ 52.737 Operating permits.

Emission limitation and other provisions contained in operating permits issued by the State in accordance with the provisions of the federally approved permit program shall be the applicable requirements of the federally approved Illinois SIP for the purpose of section 113 of the Clean Air Act and shall be enforceable by USEPA and by any person in the same manner as other requirements of the SIP. USEPA reserves the right to deem an operating permit not federally enforceable. Such a determination will be made according to appropriate procedures, and be based upon the permit, permit approval procedures or permit requirements which do not conform with the operating permit program requirements or the requirements of USEPA's underlying regulations.

[FR Doc. 92-30440 Filed 12-16-92; 8:45 am]
BILLING CODE 6560-50-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101-34

[FPMR Amendment E-273]

Supply Support for Disasters and National Security Emergencies

AGENCY: Federal Supply Service, GSA.

ACTION: Final rule.

SUMMARY: This regulation cancels the authority for GSA Handbook, Emergency Supply Support Operations, which is no longer needed and provides changes for acquiring personal property and nonpersonal services from GSA during major disasters and national emergencies. These changes are necessary to reflect the broad scope of emergency response situations and provide a basic framework for GSA supply support. It is anticipated that this framework will be utilized Governmentwide for incorporation into emergency plans and procedures.

EFFECTIVE DATE: December 17, 1992.

FOR FURTHER INFORMATION CONTACT: William M. Wilson, Office of Strategic Planning and Marketing (703-305-7992).

SUPPLEMENTARY INFORMATION: The General Services Administration (GSA) has determined that this rule is not a major rule for the purposes of Executive Order 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. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for and consequences of this rule; has determined that the potential benefits to society from this rule outweigh the potential costs; has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Part 101-34

Government property management, Emergency supply support.

For the reasons set forth in the preamble, 41 CFR part 101-34 is amended to read as follows:

PART 101-34—EMERGENCY SUPPLY SUPPORT

1. The authority citation for part 101-34 continues to read as follows:

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

2. The heading of part 101-34 is revised as set forth above.

3. Section 101-34.000 is revised to read as follows:

§ 101-34.000 Scope of part.

This part provides for GSA supply support to Federal agencies during major natural and technological disasters and national security emergencies.

4. Section 101-34.001 is revised to read as follows:

§ 101-34.001 Applicability.

The provisions of this part are applicable to all executive agencies.

§ 101-34.002 and 101-34.003 [Removed]

5. Sections 101-34.002 and 101-34.003 are removed.

Subpart 101-34.1—Emergency Operations

6. The heading of subpart 101-34.1 is revised.

7. Section 101-34.100 is revised to read as follows:

§ 101-34.100 Scope of subpart.

This subpart provides for acquiring personal property and nonpersonal services from GSA during major disasters and national emergencies.

8. Section 101-34.101 is revised to read as follows:

§ 101-34.101 Requests for GSA support in acquiring supplies and services.

(A) Normal or established emergency FEDSTRIP/MILSTRIP requisitioning and order processing procedures shall be followed (refer to the latest editions of the GSA Supply Catalog or the GSA Federal Supply Service Customer Assistance Guide for general information). Ordering agencies shall use normal or emergency funding citations. When emergency conditions result in material shortages or other developments occur, changes may be instituted in supply methods or procedures.

(b) Requisitions and requests for acquisition support shall be processed in accordance with the assigned priority designator code and/or the assigned Defense Priorities and Allocations System (DPAS) rating.

(c) All agencies are encouraged to pre-position stocks of essential supplies and equipment to allow for 15-30 days of operation at their emergency operating facilities. Agencies supporting Federal response plans should maintain sufficient stocks of essential supplies, equipment, and materials to operate response elements independently for up to 7 days. A regularly maintained list of items expedites inventorying, stocking, and replenishment.

9. Section 101-34.102 is revised to read as follows:

§ 101-34.102 GSA emergency operation and coordination centers, and customer service director program.

(a) GSA will establish, based on the severity of the emergency, an emergency operation center at GSA Central Office. Emergency coordination centers may also be established at each GSA service headquarters and/or regional offices. Continuous 24-hour operation will be provided when necessary.

(b) Regional field supply liaison services are normally provided through the customer service director (CSD) program. Located in every GSA region and overseas, the CSD program will continue to provide assistance during an emergency.

§§ 101-34.103, 101-34.104 and 101-34.105 [Removed]

10. Sections 101-34.103, 101-34.104, and 101-34.105 are removed.

Subpart 101-34.2 (§ 101-34.200)—[Removed and Reserved]

11. Subpart 101-34.2 (§ 101-34.200) is removed and reserved.

Dated: November 19, 1992.

Richard G. Austin,

Administrator of General Services.

[FR Doc. 92–30623 Filed 12–16–92; 8:45 am]

BILLING CODE 6820–24–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 69

[CGD 92–058]

Tonnage Measurement of Vessels

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending its tonnage measurement regulations for vessels by updating the list of organizations authorized to measure vessels, by extending application of the Simplified Measurement System to all barges over 79 feet in overall length not engaged on a foreign voyage, and by eliminating, in most instances, the need to file an additional form for Simplified Measurement. These amendments are necessary to update the regulations and align them with changes in the tonnage measurement laws.

EFFECTIVE DATE: December 17, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Donald W. Goebel, Vessel Documentation and Tonnage Survey Branch, (202) 267–1103.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principle persons involved in drafting this document are Mr. Donald W. Goebel, Project Manager, Vessel Documentation and Tonnage Survey Branch, and Mr. Stephen H. Barber, Project Counsel, Office of Chief Counsel.

Regulatory Information

This rule is being issued as a final rule without opportunity for public comment and made effective on the date of publication in the **Federal Register**. This rulemaking is limited to the following administrative changes and corrections:

1. It aligns 46 CFR 69.11 with statutory changes intended to relieve the burden on barge owners by allowing them to use the less costly, quicker Simplified Measurement System on their barges of 79 feet or more in overall length not engaged on a foreign voyage.

2. It updates 46 CFR 69.15(a) by adding the name of a second organization to the list of organizations already approved by the Coast Guard to measure vessels. This change benefits vessel owners and operators by informing them of an additional source for measurement services.

3. It reduces the paperwork burden on vessel owners by eliminating, in most instances, the need to complete an additional application form when the data is available already on another Coast Guard form.

4. It corrects three minor printing errors in the existing regulations.

For these reasons, the Coast Guard for good cause finds, under 5 U.S.C. 553 (b)(B) and (d)(3), that notice and public procedure thereon before the effective date of the final rule are unnecessary and that the final rule should be made effective in less than 30 days after publication.

Discussion of Changes

1. On November 16, 1990, Public Law 101–595 amended the vessel tonnage measurement law (46 U.S.C. subtitle II, part J) so as to allow all barges ("non-self-propelled vessels") of 79 feet or more in overall length not engaged on a foreign voyage to be measured under the Simplified Measurement System. This rulemaking amends 46 CFR 69.11 to align the tonnage measurement regulations with the statutory amendment.

2. This rulemaking updates 46 CFR 69.15(a), which lists the organizations authorized by the Coast Guard to measure vessels, by adding Det Norske Veritas Classification (USA) Inc. (DNV/USA). Under 46 U.S.C. 14103, the Coast Guard is authorized to delegate the authority to measure vessels and to issue appropriate certificates of measurement for U.S. vessels. Section 69.27 of title 46 of the Code of Federal Regulations sets forth the procedures by which an organization qualifies for such a delegation. On March 12, 1992, the Coast Guard approved the application of DNV/USA for delegation of this authority. This rulemaking simply adds DNV/USA's name to 46 CFR 69.15(a), the provision listing these authorized organizations.

3. This rulemaking allows vessels owners applying for measurement under the Simplified Measurement System to submit a form completed by vessel's builder instead of the application form specified in 46 CFR 69.205. Coast Guard form CG–1261, entitled "Builder's Certification and First Transfer of Title," has been revised to request the same information regarding the vessel's dimensions as that requested by the form presently specified (form CG–5397, entitled "Application for Simplified Measurement"). (The revised form CG–1261, as approved by the Office of Management and Budget on April 14, 1992, is illustrated on page 10570 of volume 57 of the **Federal Register** (March 16, 1992)). Thus, if the vessel's builder has completed a revised form CG–1261, the vessel's owner may submit that form to apply for Simplified Measurement instead of form CG–5397. This option simply relieves the vessel's owner of the burden of compiling the necessary information and completing a form.

4. This rulemaking corrects three minor printing errors in the regulations. In 46 CFR 69.5(a)(4), the word "Commandment" should read "Commandant". The reference in 46 CFR 69.119 to "§ 69.177(g)(3)" should read "§ 69.117(g)(3)". There is no § 69.177(g)(3). In the section heading for 46 CFR 69.169, the word "except" should read "exempt".

Regulatory Evaluation

This rule is not major under Executive Order 12291 and not significant under the "Department of Transportation Regulatory Policies and Procedures" (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary.

This rule is administrative in nature and conforms the vessel tonnage measurement regulations to a statutory amendment, updates the list of organizations delegated measurement authority by the Coast Guard, and provides an optional application form. The only impact this rule will have results from eliminating, in most instances, the need to complete a Coast Guard form CG–5397 to apply for Simplified Measurement. This will save approximately one hour per application or a total of 10,000 hours per year industry wide.

Small Entities

As a rule not required to be published first as a notice of proposed rulemaking, this rule is exempt from the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule aligns existing regulations with a statutory amendment, references a Coast Guard delegation of authority already in effect, and eliminates, in most instances, the need to complete an application form. This rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). The collection of information burden imposed on vessel owners by 46 CFR 69.205 would be lessened by the submission of form CG–

1261, if one has been completed by the vessel's builder.

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under section 2.B.2 of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. This rule is administrative in nature and concerns the procedures for measuring vessels. It clearly has no environmental impact. A Categorical Exclusion Determination is available in docket for inspection or copying at the office of the Executive Secretary, Marine Safety Council, U.S. Coast Guard Headquarters, 2100 Second Street, SW., room 3406, Washington, DC 20593–0001.

List of Subjects in 46 CFR Part 69

Measurement standards, Reporting and recordkeeping requirements, Vessels.

For the reasons set out in the preamble, the Coast Guard amends 46 CFR part 69 as follows:

PART 69—MEASUREMENT OF VESSELS

1. The authority citation for part 69 continues to read as follows:

Authority: 46 U.S.C. 14102, 14103; 49 CFR 1.46. Sec. 69.27 issued under 44 U.S.C. 3507; 49 CFR 1.45.

§ 69.5 [Amended]

2. In § 69.5, paragraph (a)(4), remove the word "Commandment" and add, in its place, the word "Commandant".

3. In § 69.11, paragraph (a)(2)(vi) is added and paragraph (d) is revised to read as follows:

§ 69.11 Determining the measurement system or systems for a particular vessel.

(a) * * *

(2) * * *

(vi) A non-self-propelled vessel not engaged on a foreign voyage, unless the owner requests measurement under this system.

* * * * *

(d) *Simplified Measurement System (subpart E).* This system may be applied, at the owner's option, instead of the Standard Measurement System to the following vessels:

(1) A vessel that is under 79 feet in overall length.

(2) A vessel of any length that is non-self-propelled and not engaged on a foreign voyage.

(3) A vessel of any length that is operated only for pleasure and operated only on the Great Lakes.

4. In § 69.15, paragraph (a) is revised to read as follows:

§ 69.15 Organizations authorized to measure vessels.

(a) Except as under paragraphs (c) and (d) of this section, all U.S. vessels to be measured or remeasured under the Convention, Standard, or Dual Measurement Systems must be measured by the American Bureau of Shipping (ABS Americas) or Det Norske Veritas (DNV/USA). Applications for measurement must be directed to ABS Americas, 16855 Northchase Drive, Houston, TX 77060–6008, (713) 874–6416, or to Det Norske Veritas Classification (USA) Inc., 80 Grand Avenue, suite 201, River Edge, NJ 07661, (201) 488–0112.

* * * * *

§ 69.119 [Amended]

5. In § 69.119, paragraph (c), remove "§ 69.177(g)(3)" and add, in its place, "§ 69.117(g)(3)".

69.169 [Amended]

6. In § 69.169, in the section heading, remove the word "except" and add, in its place, the word "exempt".

7. Section 69.205 is revised to read as follows:

§ 69.205 Application for measurement services.

To apply for measurement under the Simplified Measurement System, the owner of the vessel must complete and submit a current issue of Coast Guard form CG–5397 or submit a completed, current issue of Coast Guard form CG–1261 to the Coast Guard Port of Documentation Office at the port where the vessel will be documented. (See part 67, appendix D, of this chapter for a list of these offices.)

Dated: November 2, 1992.

R.C. North,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 92–30499 Filed 12–16–92; 8:45 am]

BILLING CODE 4910–14–M

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 517 and 552

[APD 2800.12A, CHGE 43]

General Services Administration Acquisition Regulation; Use and Exercise of Options

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration Acquisition Regulation (GSAR) is amended to revise Subpart 517.2, Options, to facilitate the use and exercise of options in appropriate circumstances and link the use and exercise of options with GSA's objective of pursuing longer term contractual relationships with quality vendors. The change also adds section 552.217–71 to provide the text of the provisions, Notice Regarding Option(s).

EFFECTIVE DATE: December 15, 1992.

FOR FURTHER INFORMATION CONTACT: Ida M. Ustad, Office of GSA Acquisition Policy, (202) 501–1224.

SUPPLEMENTARY INFORMATION:

A. Background

GSA has obtained a class deviation from the current Federal Acquisition Regulation (FAR) coverage on the use of options in order to support its Quality Contractor Program. However, GSA believes these changes may be appropriate for Governmentwide use. Accordingly, GSA will recommend the Civilian Agency Acquisition Council consider establishing a FAR case to examine whether the FAR should be revised in a similar manner.

B. Public Comments

This rule was published in the Federal Register for public comment on March 13, 1992 (57 FR 8856). Public comments supporting the proposed rule were received from the Laborers' International Union of North America and the Association for Information and Image Management. Specific comments were also received from the American Bar Association on several sections of the proposed rule. All public comments and comments from GSA contracting activities were considered in formulating this final rule.

C. Executive Order 12291

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The exemption applies to this rule.

D. Regulatory Flexibility Act

GSA certifies 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.

E. Paperwork Reduction Act

This rule does not contain any recordkeeping or information collection requirements that require the approval of OMB under 44 U.S.C. 3501 et seq.

List of Subjects in 48 CFR Parts 517 and 552

Government procurement.

1. The authority citation for 48 CFR parts 517 and 552 continues to read as follows:

Authority: 40 U.S.C. 486(c).

PART 517—OPTIONS

2. Section 517.200 is added to read as follows:

517.200 Scope of subpart.

This subpart prescribes policies and procedures for the use and exercise of options. When a requirement in this subpart is inconsistent with FAR 17.2, this subpart takes precedence. When a requirement of this subpart is inconsistent with GSAR 536.6, the latter subpart takes precedence. A class deviation from the FAR has been approved to implement GSA's Quality Contractor Program. This subpart applies to contracts including those for (a) services involving the construction, alteration, or repair (including dredging, excavating, and painting) of buildings, bridges, roads, or other kinds of real property; (b) architect-engineer services; (c) automatic data processing (ADP) equipment and systems; and (d) telecommunications equipment and services.

517.201 [Removed]

3. Section 517.201 is removed.

4. Section 517.202 is added to read as follows:

517.202 Use of options.

(a) The inclusion of options in contracts under appropriate circumstances is encouraged. The use of options may reduce procurement lead time and associated costs, ensure continuity of contract support, improve overall contractor performance, and facilitate longer term contractual relationships with those contractors that continuously meet or exceed quality performance expectations outlined in the contract.

(b) Inclusion of an option is normally in the Government's interest where—

(1) Additional supplies or services may be required during the contract term;

(2) Additional supplies or services may be required beyond the initial contract term and either multiyear contracting authority is not available or its use is inappropriate;

(3) There is a need for continuity of supply or services support;

(4) Funds are not available for the entirety of the Government's needs, but are likely to become available during the contract term; or

(5) The contract is with an emerging small business with minimal performance history in the contract supply or service and the basic quantity is intended to be a learning or testing quantity.

(c) Inclusion of an option may not be appropriate where the circumstances described in FAR 17.202(b)(2) and 17.202(c) (1) and (3) exist or where the market prices for the supplies or services are likely to change substantially and an economic price adjustment clause will not adequately protect the Government's interests.

5. Section 517.203 is added to read as follows:

517.203 Solicitations.

Solicitations containing options to extend (see FAR 17.208 (f) and (g)) should normally inform offerors of the potential for entering into a long term contractual relationship with the GSA subject to a continuing need and the successful offeror's ability to perform at levels which meet or exceed the agency's quality performance expectations.

6. Section 517.204 is revised to read as follows:

517.204 Contracts.

The head of the contracting activity must approve exceeding the 5-year limitations specified in FAR 17.204(e) for individual contracts. The Associate Administrator for Acquisition Policy must approve requests to exceed the limitations for classes of contracts. The contract file for individual approvals and the requests for approval of classes of contracts must support the need to exceed the 5-year limitation. This section does not apply to contracts for automatic data processing (ADP) equipment and systems or to contracts for telecommunications equipment and services.

7. Section 517.207 is revised to read as follows:

517.207 Exercise of options.

(a) If the option was not evaluated as part of the original competition, a synopsis of the option before it is exercised is required unless exempt under FAR 5.202.

(b) In addition to the items listed in FAR 17.207(d), the contracting officer may consider whether the contractor's performance under the contract has met or exceeded the Government's expectation for quality performance, or whether another circumstance exists that would warrant an extended contractual relationship when deciding whether to exercise an option. The contracting officer must always determine the option price(s) is fair and reasonable before exercising an option.

8. Section 517.208 is revised to read as follows:

517.208 Solicitation provisions and contract clauses.

(a) In addition to other applicable provisions or clauses related to options, the contracting officer shall insert a provision substantially the same as the provision at 552.217–71, Notice Regarding Option(s), in solicitations for supplies or services when necessary to inform offerors of the importance GSA will place on past performance when considering whether to exercise options.

(b) The contracting officer shall insert a provision substantially the same as the provision at 552.217–70, Evaluation of Options, in solicitations for procurements under the Federal Supply Service (FSS) stock or special order program when (1) the solicitation contains an option to extend the term of the contract and (2) a firm-fixed price contract with economic price adjustment based on the Producer Price Index or alternative indicator of market price changes is contemplated.

9. Section 552.217–71 is added to read as follows:

552.217–71 Notice Regarding Option(s).

As prescribed in 517.208(a), insert the following provision:

Notice Regarding Option(s) (Nov 1992)

The General Services Administration (GSA) has included an option to [Insert "purchase additional quantities of supplies or services" or "extend the term of this contract" or "purchase additional quantities of supplies or services and to extend the term of this contract"] in order to demonstrate the value it places on quality performance by providing a mechanism for continuing a contractual relationship with a successful Offeror that performs at a level which meets or exceeds GSA's quality performance expectations as communicated to the Contractor, in writing, by the Contracting Officer or designated representative. When deciding whether to exercise the option, the Contracting Officer will consider the quality of the contractor's past performance under this contract in accordance with 48 CFR 517.207.

(End of Provision)

Dated: December 7, 1992.

Richard H. Hopf III,

Associate Administrator for Acquisition Policy.

[FR Doc. 92–30450 Filed 12–16–92; 8:45 am]

BILLING CODE 6820–61–M

Proposed Rules

Federal Register
Vol. 57, No. 243
Thursday, December 17, 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.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 17

Regulations Governing the Financing of Commercial Sales of Agricultural Commodities

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Proposed rule; extension of comment period.

SUMMARY: This document extends the comment period relating to a proposed rule that would amend the regulations applicable to the financing of the sale and exportation of agricultural commodities pursuant to title I of the Agricultural Trade Development and Assistance Act of 1954, as amended (Pub. L. 480) and also sets forth the basis for the Regulatory Flexibility Act certification in the preamble of such proposed rule.

DATES: Consideration will be given to written comments submitted in duplicate on or before January 13, 1993.

ADDRESSES: Comments should be sent to Christopher E. Goldthwait, Acting General Sales Manager, Foreign Agricultural Service, U.S. Department of Agriculture, room 4071 South Building, 14th and Independence, SW., Washington, DC 20250–1000.

FOR FURTHER INFORMATION CONTACT: Connie B. Delaplane, Director, Public Law 480 Operations Division, Export Credits, Foreign Agricultural Service, room 4549 South Building, U.S. Department of Agriculture, 14th and Independence, SW., Washington, DC 20250–1000. Telephone (202) 720–3664.

SUPPLEMENTARY INFORMATION: On November 12, 1992, we published in the **Federal Register** (57 FR 53607) a proposed rule that would amend the regulations applicable to the financing of the sale and exportation of agricultural commodities pursuant to title I of the Agricultural Trade Development and Assistance Act of 1954, as amended (Pub. L. 480).

The preamble to the proposed rule included a certification that the rule would not have a significant economic impact on a substantial number of small entities. The entities impacted by the proposed rule would be those engaged in shipping agent activities. We are not aware of any shipping agents that are "small entities" that are presently involved in the types of activities being limited by the proposed rule. As regards the proposal to cap the level of commissions payable on a Title I, Public Law 480 transaction, we do not believe that this would result in any significant economic impact since most vessel offers are submitted by a ships broker, which shares in the 2½% brokerage commission. Also, any reduced income would, in large part, be offset by savings due to prohibitions on payments and benefits which have been permitted in the past.

Comments on the proposed rule were required to be submitted by December 14, 1992. However, in response to requests received we are extending this comment period to January 13, 1993. This extension will allow interested persons additional time in which to prepare comments on the proposed rule.

Signed at Washington, DC on December 11, 1992.

Christopher E. Goldthwait,

Acting General Sales Manager, Foreign Agricultural Service; and Vice President, Commodity Credit Corporation.

[FR Doc. 92–30549 Filed 12–16–92; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF THE INTERIOR

Geological Survey

30 CFR Part 401

RIN 1028–AA03

State Water Research Institute Program

AGENCY: U.S. Geological Survey, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Geological Survey (USGS) is proposing to amend the procedures used to evaluate the State Water Research Institutes to implement the changes to the Water Resources Research Act of 1984. This action is intended to reduce costs associated with the evaluation process for both the USGS and the institutes. The USGS is also proposing to remove references to obsolete documents, revise and clarify the requirements for new institutes, revise the requirements for expenditure of unobligated funds, and make other minor changes to bring the regulation in compliance with the amended Act.

DATES: Comments must be received on or before January 19, 1993.

ADDRESSES: Comments should be addressed to the Chief Hydrologist, U.S. Geological Survey, 424 National Center, Reston, Virginia 22092.

FOR FURTHER INFORMATION CONTACT: Allen Ford, Office of External Research, U.S. Geological Survey, Water Resources Division, 424 National Center, 12201 Sunrise Valley Drive, Reston, Virginia 22092, (703) 648–6806.

SUPPLEMENTARY INFORMATION:

Background

The State Water Research Institutes authorized by the Water Resources Research Act of 1984 (Pub. L. 98–242, 98 Stat. 97) and reauthorized by Water Research Institutes Authorization Through Fiscal Year 1994 (Pub. L. 101–397, 104 Stat. 852) support research, education, and information transfer activities. The 54 institutes in the program are administered and periodically evaluated under the provisions of 30 CFR part 401, adopted in May 1985. The reauthorization amended several provisions of the Water Resources Research Act of 1984, and the USGS is accordingly proposing minor revisions to the rule guiding the administration and evaluation of the institutes.

The existing rule guiding the evaluation of the institutes requires that five person teams visit each of the 54 institutes at least once every 5 years. The USGS is proposing minor revisions to the rule pertaining to institute evaluations by amending subpart E of 30 CFR 401.26 which describes the procedures used to evaluate the State Water Research Institutes. The reauthorization amends section 104(e) of the Water Resources Research Act of 1984 to give the Secretary of the Interior more discretion in the evaluation process. This action would revise the rule pertaining to institute evaluations such that: The size of the evaluation team could be decreased and its

composition changed; the evaluation team would visit only those institutes it considered, on the basis of submitted documentation, to be potential candidates for probation; the composition of the evaluation team would be changed; the evaluation team would consider only those institute activities funded under section 104 of the Water Resources Research Act of 1984; evaluation criteria not directly related to performance of the institutes would be eliminated; the evaluation team would be allowed more time to submit a written report of its findings. The proposed changes would: Lower the cost of the evaluation process to both the granting agency and the institutes by minimizing the number of institute site visits; permit greater consistency in the evaluation process by using, to the extent possible, only one evaluation team for all institutes; and base the evaluation only on demonstrated performance in the use of section 104 grants.

Section 401.11(a) of the rule requires that, if the full amount of the available grant funds for any fiscal year has not been requested as of the closing date for receipt of applications, any remaining funds shall be made available to the institutes for amended applications. The USGS is proposing to revise this section to state that any such remaining funds be made available to support competitively selected research projects under the terms of section 104(g) of the Act, as required by the reauthorization.

The USGS is proposing to amend § 401.11(g) to state that Federal funds received by the institutes shall be matched on a basis of no less than two non-Federal dollars for each Federal dollar, as required by the reauthorization.

The USGS is proposing to amend § 401.12(c) to remove references to obsolete documents and add references to new documents guiding the institutes' administration of the grants received under section 104 of the Act.

Public Participation

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions or objections regarding the proposed amendments to the location identified in the ADDRESS section of this preamble. Comments must be received on or before January 19, 1993.

Required Analyses

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and certifies 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.*). This proposed action will promote efficiency and economy by reducing costs for both the Government and the institutes. Therefore, it will not adversely affect the economy of the Nation or any small entity.

Environmental Effects

This action will have no potential for significant environmental impact and is categorically excluded from the requirements for compliance with the National Environmental Policy Act of 1969, as amended (Pub. L. 91–190, 83 Stat. 852)

Paperwork Reduction Act

The information collection requirements in §§ 401.11 and 401.19 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et. seq.* and assigned clearance number 1028–0044.

Executive Order No. 12778

The Department has certified to the Office of Management and Budget that this proposed regulation meets the standards provided in Sections 2(a) and 2(b) of Executive Order No. 12778.

Author

The principal author of this proposed rule is Allen Ford, Water Resources Division, U.S. Geological Survey.

The Catalog of Federal Domestic Assistance program affected is No. 15.805, Assistance to State Water Research Institutes.

List of Subjects in 30 CFR Part 401

Colleges and universities, Grants programs-natural resources, Research, Water Resources.

For the reasons set out in the preamble, 30 CFR chapter IV is proposed to be amended as follows:

PART 401—STATE WATER RESEARCH INSTITUTE PROGRAM

1. The Authority citation for 30 CFR part 401 is revised to read as follows:

Authority: 42 U.S.C. 10303.

Subpart A—General

2. Section 401.4 is revised to read as follows:

§ 401.4 Information Collection.

(a) The information collection requirements contained in §§ 401.11 and 401.19 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1028–0044. The information will be used to support water related research and provide performance reports on accomplishments achieved under Pub. L. 98–242, 98 Stat. 97 (42 U.S.C. 10303). This information allows the agency to determine compliance with the objectives and criteria of the grant programs. Response is mandatory in accordance with 30 CFR 401.11 and 401.19.

(b) Public reporting burden for the collection of information is estimated to average 84 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other suggestions for reducing the burden, to Paperwork Management Officer, U.S. Geological Survey, Paperwork Management Section, MS 208, Reston, Virginia, 22092 and the Office of Management and Budget, Paperwork Reduction Project (1028–0044), Washington, DC 20503.

Subpart B—Designation of Institutes; Institute Programs

3. Section 401.6 is amended by revising paragraph (c)(2) to read as follows:

§ 401.6 Designation of institutes.

* * * * *

(c) * * *

(2) A management plan for meeting the requirements of the evaluation mandated by § 401.26.

Subpart C—Application and Management Procedures

4. Section 401.11 is amended by revising paragraphs (a) and (g) to read as follows:

§ 401.11 Application for grants.

(a) Subject to the availability of appropriated funds, but not to exceed a total of $10 million, an equal amount of dollars will be available to each qualified institute in each fiscal year to assist it in carrying out the purposes of the Act. If the full amount of the appropriated funds is not obligated by the close of the fiscal year for which they were appropriated, the remaining funds shall be made available in the succeeding fiscal year to support competitively selected research projects under the terms of section 104(g) of the Act. Selection and approval of such projects shall be based on criteria to be determined by the Director.

Announcement of such criteria shall be made by notice in the **Federal Register**. The granting agency may retain an amount up to 15 percent of total appropriation for administrative costs.

* * * * *

(g) The application shall provide assurance that non-Federal dollars will be available to share the costs of the proposed program. The Federal funds are to be matched on a basis of no less than two non-Federal dollars for each Federal dollar.

* * * * *

5. Section 401.12 is amended by revising paragraph (c) to read as follows:

§ 401.12 Program management.

* * * * *

(c)(1) Acceptance of the award document certifies the grantee's assurance that the grant will be administered in compliance with OMB regulations, policies, guidelines, and requirements as described in:

(i) Circular No. A–21, revised, Cost Principles of Educational Institutions;

(ii) Memorandum No. M–92–01, Coordination of Water Resources Information;

(iii) Circular No. A–88, revised, Indirect Cost Rates, Audit and Audit Followup at Educational Institutions;

(iv) Circular No. A–110, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and other Nonprofit Organizations; and

(v) Circular No. A–124, Patents-Small Business Firms and Nonprofit Organizations.

(2) Copies of the documents listed in paragraph (c)(1) of this section shall be available from the granting agency.

Subpart E—Evaluation

6. Section 401.26 is revised to read as follows:

§ 401.26 Evaluation of institutes.

(a) Within 2 years of the date of its certification according to the provisions of § 401.6, each institute will be evaluated for the purpose of determining whether the national interest warrants its continued support under the provisions of the Act. That determination shall be on:

(1) The quality and relevance of its water resources research as funded under the Act;

(2) Its effectiveness as an institution for planning, conducting, or arranging for research;

(3) Its demonstrated performance in making research results available to users in the State and elsewhere; and

(4) Its demonstrated record in providing for the training of scientists through student involvement in its research program.

(b) An evaluation team, selected by the granting agency on the basis of the members' knowledge of water research and administration, shall evaluate each institute, and may with the concurrence of the granting agency, visit such institutes as it considers necessary. The team is to include at least one individual from the following categories:

(1) Employees of the Department of the Interior;

(2) University faculty or other professionals with relevant experience in the conduct of water resources research;

(3) Former directors of water research institutes; and

(4) University faculty or other professionals with relevant experience in information transfer.

(c) The granting agency may request recommendations for team selections from the National Research Council/National Academy of Sciences and from other organizations whose members include the types of individuals cited in paragraph (b) of this section.

(d) The granting agency shall, as an administrative cost, provide the funds for travel and per diem expense of the team members, within the maximum limits allowable under Federal travel regulations (41 CFR subtitle F).

(e) The granting agency has the right to select dates for evaluation visits, and notice of the team's visit shall be provided to the institute being evaluated at least 60 days in advance.

(f) It shall be the responsibility of each institute to provide such documentation of its activities and accomplishments as the granting agency and evaluation team may reasonably request. The request for this documentation shall be made at least 60 days prior to the due date of its receipt.

(g) The team shall, within 90 days after completion of its evaluation, submit a written report of its findings to the granting agency for transmittal to the institute. If an institute is found to have deficiencies in meeting the objectives of the Act, it shall be allowed 1 year to correct them and to report such action to the granting agency. The decision as to the institute's eligibility to receive further funding will rest with the granting agency.

(h) After the initial evaluation, each institute shall be reevaluated at least every 5 years.

Dated: November 16, 1992.

Harlan L. Watson,

Principal Deputy Assistant Secretary—Water and Science.

[FR Doc. 92–30471 Filed 12–16–92; 8:45 am]

BILLING CODE 4310–31–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD7–92–112]

Drawbridge Operation Regulations; Okeechobee Waterway, Fort Myers, FL

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: At the request of Lee County, (the bridge owner), the Coast Guard proposes to change the regulations governing the Sanibel Causeway Drawbridge over San Carols Bay at Punta Rassa, by requiring a five (5) minute advance notice prior to opening of the bridge during certain hours. This action should relieve the bridge owner of the burden of having a bridge tender at the bridge site constantly available to open the draw, while still providing for the reasonable needs of navigation.

DATES: Comments must be received on or before February 1, 1993.

ADDRESSES: Comments may be mailed to Commander (oan), Seventh Coast Guard District, 909 SE. 1st Avenue, Miami, Florida 33131–3050, or may be delivered to room 406 at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is 305–536–4103.

The Commander, Seventh Coast Guard District maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Ian MacCartney, Project Manager, Bridge Section, at (305) 536–4103.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking [CGD7–92–112] and the specific section of this proposal to which each comment applies, and give the reason for each comment. The Coast Guard requests that all comments and attachments be

submitted in an unbound format suitable for copying. If not practical, a second copy of any bound material is requested. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to Mr. Ian MacCartney at the address under "ADDRESSES." The request should include reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the Federal Register.

Drafting Information

The principal persons involved in drafting this document are Ian MacCartney, Project Manager, and Lieutenant J.M. Losego, Project Counsel.

Background and Purpose

The Sanibel Causeway Drawbridge which crosses San Carlos Bay, Okeechobee Waterway mile 151, presently opens on signal except that from 11 a.m. to 6 p.m., the draw opens only on the quarter hour. The bridge owner has requested that from 10 p.m. to 6 a.m., the bridge be untended and allowed to open on signal if at least a five minute advance notice is given. The purpose of the request is to reduce the burden of staffing the bridge with full time bridgetenders during nighttime hours.

Discussion of Proposed Amendments

For the nighttime hours, statistics show that the span opens only once every third night during the hours requested. The bridge owner operates a toll booth East of the draw span. It operates 24 hours per day. Personnel at the toll booth will monitor a marine radio and dispatch an attendant to the bridge to operate the drawspan. This proposal should reduce the operating costs for the owner while still providing for the reasonable needs of navigation on the Okeechobee Waterway. Public vessels of the United States, vessels owned or operated by the state, county, or local government and used for public safety purposes, or vessels in a situation where a delay would endanger life or property shall, upon proper notification, be passed at any time.

Regulatory Evaluation

This proposal is not major under Executive Order 12291 and not significant under the Department of Transportation regulatory policies and procedures (44 FR 11040; February 26, 1979.) The Coast Guard expects the economic impact of this proposal to be so minimal that a regulatory evaluation is unnecessary. We conclude this because the bridge owner has agreed to open the draw with a five minute advance notice.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal, if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632.) Because it expects the impact of this proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this proposal under the principles and criteria contained in Executive Order 12612, and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that, under section 2.B.2.g.(5) of Commandant Instruction M16475.1B, promulgation of operating requirements or procedures for drawbridges is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under "ADDRESSES."

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 117 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. In § 117.317, paragraph (k) is revised to read as follows:

§ 117.317 Okeechobee Waterway

* * * * *

(k) *Sanibel Causeway bridge, mile 151 at Punta Rassa.* The draw shall open on signal; except that from 11 a.m. to 6 p.m., the draw need open only on the hour, quarter hour, half hour, and three quarter hour. From 10 p.m. to 6 a.m. the draw will open on signal if at least a five minute advance notice is given. Exempt vessels shall be passed at any time.

Dated: December 2, 1992.

W.P. Leahy,

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

[FR Doc. 92–30501 Filed 12–16–92; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 117

[CGD7–92–56]

Drawbridge Operation Regulations; Hillsborough River, Tampa Bay, Northern Part, FL

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: At the request of the City of Tampa, Hillsborough County and the Florida Department of Transportation (FDOT), (the bridge owners), the Coast Guard proposes to change the regulations governing seven drawbridges over the Hillsborough River by requiring two hour advance notice prior to opening the bridges. This action should relieve the bridge owners of the burden of having to staff the bridges with full-time bridge tenders to open the draws, while still providing for the reasonable needs of navigation.

DATES: Comments must be received on or before February 1, 1993.

ADDRESSES: Comments may be mailed to Commander (oan), Seventh Coast Guard District, 909 SE. 1st Avenue, Miami, Florida 33131–3050, or may be delivered to room 406 at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (305) 536–4103.

The Commander, Seventh Coast Guard District maintains the public docket for this rulemaking. Comments will become part of this docket and will

be available for inspection or copying at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Ian MacCartney, Project Manager, Bridge Section, at (305) 536–4103.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD7–92–56) and the specific section of this proposal to which each comment applies, and give the reason for each comment. The Coast Guard requests that all comments and attachments be submitted in an unbound format suitable for copying. If not practical, a second copy of any bound material is requested. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to Mr. Ian MacCartney at the address under ADDRESSES. The request should include reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the Federal Register.

Drafting Information

The principal persons involved in drafting this document are Ian MacCartney, Project Manager, and Lieutenant J.M. Losego, Project Counsel.

Background and Purpose

The drawbridges at Kennedy Blvd., Platt Street, Brorein Street, Cass Street, and Laurel Street which cross the Hillsborough River, presently open on signal from 9 a.m. to 4 p.m., Monday through Friday and from 8 a.m. to 6 p.m. Saturdays, Sundays and Federal holidays. At all other times they open on signal if at least a two hour notice is given. The West Columbus Drive Drawbridge and West Hillsborough Drive Drawbridge open on signal from 8 a.m. to 6 p.m. At all other times the draws open on signal if at least a one hour notice is given. The bridge owners have requested that all seven bridges be allowed to open on signal if at least a two hour advance notice is given. The purpose of the request is to reduce the burden of staffing the bridges with full-time bridgetenders.

Discussion of Proposed Amendments

The three bridge owners have agreed to a single point of contact (POC) for navigation to begin the bridge opening sequence within two hours of a request. Public vessels of the United States, vessels owned or operated by the state, county, or local government and used for public safety purposes, or vessels in a situation where a delay would endanger life or property shall, upon proper notification, be passed through each drawbridge as soon as possible.

A Coast Guard evaluation of the proposal concluded that none of the bridges opened more than two times per day during the last several years.

This proposal should reduce the operating costs for the owners while still providing for the reasonable needs of navigation on the Hillsborough River.

Regulatory Evaluation

This proposal is not major under Executive Order 12291 and not significant under the Department of Transportation regulatory policies and procedures (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a regulatory evaluation is unnecessary. We conclude this because the bridges seldom open for commercial navigation and the bridge owners have agreed to open the draws as quickly as possible after notification in specified circumstances such as a situation where a delay would endanger life or property.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal, if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). Because it expects the impact of this proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this proposal under the principles and criteria contained in Executive Order 12612, and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that, under section 2.B.2.g.(5) of Commandant Instruction M16475.1B, promulgation of operating requirements or procedures for drawbridges is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under ADDRESSES.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 117 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. In section 117.291, paragraph (c) is removed and paragraph (a) is revised to read as follows:

§ 117.291 Hillsborough River.

(a) The draws of the bridges at Platt Street, mile 0.0, Brorein Street, mile 0.16, Kennedy Boulevard, mile 0.4, Cass Street, mile 0.7, Laurel Street, mile 1.0, West Columbus Drive, mile 2.3, and West Hillsborough Avenue, mile 4.8, shall open on signal if at least two hours notice is given; except that, the draws shall open on signal as soon as possible after a request by a public vessel of the United States, a vessel owned or operated by the State, county or local government and used for public safety purposes, or a vessel in distress.

* * * * *

Dated: December 2, 1992.

W.P. Leahy,

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

[FR Doc. 92–30502 Filed 12–16–92; 8:45 am]

BILLING CODE 4910–14–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA-7057]

Proposed Flood Elevation Determinations

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (100-year) flood elevations and proposed base flood elevation modifications for the communities listed below. The base (100-year) flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: William R. Locke, Chief, Risk Studies Division, Federal Insurance Administration, 500 C Street, SW., Washington, DC 20472, (202) 646-2766.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) gives notice of the proposed determinations of base (100-year) flood elevations and modified base flood elevations for each community listed, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Federal Insurance Administrator has determined that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the National Flood Insurance Program. As a result, a regulatory flexibility analysis has not been prepared.

Regulatory Impact Analysis

This proposed rule is not a major rule under Executive Order 12291, February 17, 1981. No regulatory impact analysis has been prepared.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Fedealism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements. Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Source of flooding and location	Depth in feet above ground. *Elevation in feet (NGVD)
TENNESSEE	
Murfreesboro (City), Rutherford County	
Bear Branch:	
At Oakland School Road	*584
At Wenlon Road	*610
Maps available for inspection at the City Hall, 200 N.W. Broad Street, Murfreesboro, Tennessee.	
Send comments to The Honorable Joe B. Jackson, Mayor of the City of Murfreesboro, Rutherford County, P.O. Box 1139, Murfreesboro, Tennessee 37133-1139.	

§ 67.4 [Amended]

3. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/Town/County	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
Arizona	Town of Carefree, Maricopa County.	Grapevine Wash	Approximately 1,300 feet upstream of the confluence with Rowe Wash.	None	*2,517
			Approximately 0.51 mile upstream of Father Kino Trail.	None	*2,725
		Galloway Wash-North Tributary.	Approximately 0.73 mile upstream of the confluence with Unnamed Tributary to Galloway Wash.	None	*2,311
			Approximately 0.53 mile downstream of Father Kino Trail.	None	*2,449
			Approximately 0.44 mile downstream of Father Kino Trail.	None	*2,462

State	City/Town/County	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 0.8 mile upstream of Father Kino Trail.	None	*2,629
		Rowe Wash	Approximately 100 feet downstream of the confluence with Rowe Wash-Tributary 1.	None	*2,537
			Approximately 0.8 mile upstream of the confluence with Rowe Wash-Tributary 1.	None	*2,704
Maps are available for review at Town Hall, 100 Easy Street, Carefree, Arizona.					
Send comments to The Honorable Robert Anderson, Mayor, Town of Carefree, P.O. Box 740, Carefree, Arizona 85377.					
Arizona	Town of Cave Creek, Maricopa County.	Grapevine Wash	At the confluence with Rowe Wash	None	*2,482
			Approximately 1,300 feet upstream of the confluence with Rowe Wash.	None	*2,517
		Galloway Wash-North Tributary.	At the confluence with Unnamed Tributary to Galloway Wash.	*2,216	*2,216
			Approximately 0.73 mile upstream of the confluence with Unnamed Tributary to Galloway Wash.	None	*2,311
			Approximately 0.53 mile downstream of Father Kino Trail.	None	*2,449
			Approximately 0.44 mile downstream of Father Kino Trail.	None	*2,462
		Ocotillo Wash-Tributary 1	Approximately 450 feet upstream of the confluence with Ocotillo Wash.	None	*2,291
			Approximately 0.84 mile upstream of the confluence with Ocotillo Wash-Tributary 1A.	None	*2,450
		Ocotillo Wash-Tributary 1A	At the confluence with Ocotillo Wash-Tributary 1.	None	*2,319
			Approximately 0.7 mile upstream of the confluence with Ocotillo Wash-Tributary 1.	None	*2,453
		Ocotillo Wash-Tributary 2	At the confluence with Ocotillo Wash	*2,228	*2,228
			At Echo Canyon Road: Approximately 0.73 mile upstream of Echo Canyon Road.	None	*2,274
		Ocotillo Wash-Tributary 3	At the confluence with Ocotillo Wash	*2,164	*2,164
			At Echo Canyon Road	None	*2,284
			Just upstream of Highland Road (upper crossing).	None	*2,374
		Ocotillo Wash-Tributary 4	At the confluence with Ocotillo Wash	*2,124	*2,124
			Approximately 100 feet upstream of Schoolhouse Road.	None	*2,215
			Approximately 700 feet upstream of Echo Canyon Road.	None	*2,314
		Rowe Wash	Approximately 1,900 feet upstream of Echo Canyon Road.	*2,315	*2,315
			At the confluence with Grapevine Wash	None	*2,484
			Approximately 100 feet downstream of the confluence with Rowe Wash-Tributary 1.	None	*2,537
		Willow Springs Wash	Approximately 700 feet downstream of the confluence with Willow Springs Wash-Tributary 2.	*2,188	*2,188
			Approximately 275 feet upstream of the confluence with Willow Springs Wash-Tributary 2.	None	*2,218
			Approximately 2,000 feet upstream of the confluence with Willow Springs Wash-Tributary 2.	None	*2,255
			Approximately 2,550 feet downstream of Sierra Vista Drive (lower crossing).	None	*2,273
		Willow Springs Wash-Tributary 1.	At the confluence with Willow Springs Wash	*2,101	*2,101
			Approximately 1,250 feet downstream of Morningstar Road.	None	*2,162
		Willow Springs Wash-Tributary 2.	At the confluence with Willow Springs Wash	None	*2,211
			Approximately 100 feet upstream of the confluence with Willow Springs Wash.	None	*2,211
		Willow Springs Wash-Tributary 5.	At the confluence with Willow Springs Wash	*2,063	*2,063
			Approximately 100 feet upstream of Spur Cross Road.	None	*2,118
			Just downstream of Schoolhouse Road	None	*2,200
			Just downstream of Rockway Hills Drive	None	*2,251
		Willow Springs Wash-Tributary 5A.	At the confluence with Willow Springs Wash-Tributary 5.	None	*2,119
			Approximately 0.6 mile upstream of the confluence with Willow Springs Wash-Tributary 5.	None	*2,194
Maps are available for review at the Planning Department, Town Hall, 37622 North Cave Creek Road, Cave Creek, Arizona.					
Send comments to The Honorable James N. Threadgill, Mayor, Town of Cave Creek, 37622 North Cave Creek Road, Cave Creek, Arizona 85331.					
Arizona	Town of Gila Bend, Maricopa County.	Gila Bend Canal	Approximately 300 feet east of the intersection of Old U.S. Highway 80 and Papago Street.	None	#3

State	City/Town/County	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 100 feet east of the intersection of Watermelon Road and Gila Bend Canal.	None	#2

Maps are available for review at the Town Administration Office, 644 West Pima Street, Gila Bend, Arizona.

Send comments to The Honorable Duke Fox, Mayor, Town of Gila Bend, P.O. Box A, Gila Bend, Arizona 85337.

Connecticut	Darien, Town, Fairfield County.	Noroton River	Approximately 340 feet downstream of U.S. Route 1.	*13	*11
			Approximately 1.1 miles upstream of Woodway Road.	None	*110

Maps available for inspection at the Town Hall, 2 Renshaw Road, Darien, Connecticut.

Send comments to The Honorable Fred R. Sammis, Mayor of the Town of Darien, Fairfield County, Town Hall, 2 Renshaw Road, Darien, Connecticut 06820–5397.

Connecticut	Manchester, Town, Hartford County.	Hop Brook	At a point approximately 1,525 feet upstream of South Main Street Ramp "E".	*224	*225
			At a point approximately 600 feet upstream of the confluence with Hockanum River.	*705	*706
		Porter Brook	At the confluence with Hop Brook	*224	*225
			At a point approximately 120 feet upstream of the confluence with Hop Brook.	*226	*227
		Birch Mountain Brook	At the confluence with Hop Brook	*224	*225
			At a point approximately 70 feet upstream of the confluence with Hop Brook.	*224	*225

Maps available for inspection at the Department of Planning, 494 Main Street, Manchester, Connecticut 06045.

Send comments to The Honorable Stephen T. Cassano, Mayor of the Town of Manchester, Hartford County, 41 Center Street, P.O. Box 191, Manchester, Connecticut 06045–0191.

New Jersey–	Paramus, Borough, Bergen County.	Saddle River–	At the downstream corporate limits	*46	*44
			Approximately 340 feet downstream of confluence of Hohokus Brook.	*57	*56

Maps available for inspection at the Borough Engineer's Office, Jockish Square, Paramus, New Jersey.

Send comments to The Honorable Clifford Gennarelli, Mayor of the Borough of Paramus, Bergen County, Jockish Square, Paramus, New Jersey 07652.

New York	Chatham, Town, Columbia County.	Kinderhook Creek	At confluence with Kline Kill	None	*260
			Approximately .74 mile downstream of Bachus Road.	None–	*415

Maps available for inspection at the Chatham Town Hall, Zoning Office, Chatham Center, New York.

Send comments to Mr. William Hogencamp, Chatham Town Supervisor, Columbia County, R.D. 2, P.O. Box 190, Valatie, New York 12184.

New York	Ellicottville, Village, Cattaraugus County.	Great Valley Creek	Approximately 670 feet downstream of confluence of Holiday Valley Creek.	*20	*19
			Approximately 0.2 mile upstream of Mill Street	*1,540	*1,542
		Elk Creek	At confluence with Great Valley Creek	*1,535	*1,536
			Approximately 400 feet upstream of Park Drive	*1,547	*1,548
		Plum Creek	At confluence with Great Valley Creek	*1,530	*1,533
			Approximately 0.8 mile upstream of confluence with Great Valley Creek.	*1,597	*1,598
		Holiday Valley Creek	Approximately 160 feet upstream of corporate limits.	None	*1,521
			Approximately 140 feet upstream of upstream corporate limits.	None	*1,525

Maps available for inspection at the Ellicottville Village Hall, 1 W. Washington, Ellicottville, New York.

Send comments to The Honorable John Burrell, Mayor of the Village of Ellicottville, Cattaraugus County, P.O. Box 478, Ellicottville, New York 14731.

New York	Moreau, Town, Sullivan County.	Hudson River (Upper Reach)	Approximately .5 mile downstream of Feeder Dam.	*275	*276
			Approximately .75 mile upstream of Spier Falls Dam.	None	*440
		Hudson River Bypass	Confluence with Hudson River	None	*283
			Divergence from Hudson River	None	*301

Maps available for review at the Town Hall, 61 Hudson Street, South Glens Falls, New York.

Send comments to Mr. Michael Sullivan, Supervisor of the Town of Moreau, Saratoga County, P.O. Box 1349, South Glens Falls, New York 12803.

New York	Philadelphia, Village, Jefferson County.	Indian River	Approximately 250 feet downstream of downstream corporate limits.	None	*423
			Upstream corporate limits	None	*485
		Black Creek	Confluence with Indian River	None	*485
			Upstream corporate limits	None	*485

State	City/Town/County	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the Philadelphia Village Hall, 56 Main Street, Philadelphia, New York.					
Send comments to The Honorable Wayne L. Huntress, Mayor of the Village of Philadelphia, Jefferson County, P.O. Box 70, Philadelphia, New York 13673.					
Pennsylvania	Bensalem, Township, Bucks County.	Neshaminy Creek	Approximately 600 feet downstream of Hulmeville Road.	*29	*30
			Approximately 0.5 mile upstream of Hulmeville Road.	*36	*35
Maps available for inspection at the Code Enforcement Office, 2400 Byberry Road, Bensalem, Pennsylvania.					
Send comments to The Honorable Edward Burns, Mayor of the Township of Bensalem, Bucks County, 3800 Hulmeville Road, Bensalem, Pennsylvania 19020.					
Pennsylvania	Hulmeville, Borough, Bucks County.	Neshaminy Creek	Approximately 1,100 feet downstream of Hulmeville Road.	*28	*29
			At Hulmeville corporate limits	*35	*34
Maps available for inspection at the Hulmeville Borough Hall, 517 Lincoln Avenue, Hulmeville, Pennsylvania.					
Send comments to The Honorable Mark Shapcott, Jr., Mayor of the Borough of Hulmeville, Bucks County, 517 Lincoln Avenue, Hulmeville, Pennsylvania 19047.					
Tennessee	Erin City, Houston County.	Erin Branch	At confluence with Wells Creek	None	*410
			At upstream corporate limits	None	*566
		Musterground Creek	At confluence with Wells Creek	None	*410
			Approximately 50 feet upstream of State Highway 49.	None	*415
		Wells Creek	At downstream corporate limits	None	*407
			At upstream corporate limits	None	*416
		Owl Hollow	At confluence with Erin Branch	None	*453
			Approximately 820 feet upstream of Owl Hollow Road.	None	*484
		Rocky Hollow	At confluence with Erin Branch	None	*459
			At upstream corporate limits	None	*499
Maps available for inspection at the City Hall, Erin, Tennessee.					
Send comments to The Honorable E. E. Betsy Ligon, Mayor of the City of Erin, Houston County, P.O. Box 270, Erin, Tennessee 37061.					
Texas	Johnson County, Unincorporated Areas.	Hurst Creek	Approximately 150 feet downstream of County Route 601.	None	*725
			Approximately 40 feet downstream of Frontage Road to Westbound Interstate Route 35.	None	*751
		South Shannon	Approximately 0.89 mile upstream of County Route 920.	*785	*786
			Approximately 100 feet upstream of Atchison, Topeka, & Santa Fe Railway.	None	*810
Maps available for inspection at the Public Works Department, Johnson County Courthouse, 2 Main Street, Cleburne, Texas.					
Send comments to The Honorable Joe Durham, Johnson County Judge, Johnson County Courthouse, 2 Main Street, 3rd Floor, Cleburne, Texas 76031.					
Washington	Cowlitz County, Unincorporated Areas.	Cowlitz River	At Longview and Portland Northern Railroad	None	*17
			Approximately 3,600 feet upstream of State Highway 4.	*21	*21
			Approximately 1,000 feet downstream of Hazel Dell Creek.	None	*26
			At Hoyer Road	None	*41
			Just upstream of Permanent Highway 10	None	*47
			Approximately 16,500 feet upstream of the confluence of Toutle River.	None	*61
		Toutle River	At the confluence with Cowlitz River	None	*55
			Just upstream of State Highway 29	None	*70
			Approximately 12,000 feet upstream of State Highway 29.	None	*88
Maps are available for review at Department of Community Development, 207 Fourth Avenue North, Kelso, Washington.					
Send comments to The Honorable Mrs. Joan Lemieux, Chairperson, Board of Commissioners, 207 Fourth Avenue North, Kelso, Washington 98626.					
Washington	City of Kelso, Cowlitz County.	Cowlitz River	Just upstream of Burlington Northern Railroad	None	*17
			Approximately 2,500 feet upstream of State Highway 432.	None	*18
			At Milwaukee Place extended	None	*19
			At Allen Street Bridge	None	*20
			Approximately 3,600 feet upstream of Allen Street.	None	*21
Maps are available for review at Department of Public Works, 312 Allen Street, Kelso, Washington 98626.					
Send comments to The Honorable Don Gregory, Mayor, City of Kelso, 105 Allen Street, P.O. Box A, Kelso, Washington 98626.					
Washington	City of Longview, Cowlitz County.	Cowlitz River	Just upstream of State Highway 432	None	*17
			Approximately 1,000 feet downstream of Main Street.	None	*20

State	City/Town/County	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
			At upstream corporate limits, approximately 5,000 feet upstream of State Highway 4.	None	*21

Maps are available for review at Department of Planning, City Hall, 1525 Broadway, Longview, Washington.

Send comments to The Honorable Mark Hoehne, Mayor, City of Longview, 1525 Broadway, P.O. Box 128, Longview, Washington 98632.

Wisconsin	Outagamie County, Unincorporated Areas.	Mud Creek	Just upstream of County Route BB	None	*745
		Mud Creek Tributary 2	At confluence of Mud Creek Tributary	None	*759
			At confluence with Mud Creek	None	*759
			Approximately 0.4 mile upstream of Marquette Street.	None	*791
		Mud Creek Tributary (backwater from Fox River).	Just upstream of County Route BB	None	*743
			Approximately 1,200 feet upstream of County Route BB.	None	*743

Maps available for inspection at the County Zoning Administration, 410 South Walnut Street, Appleton, Wisconsin.

Send comments to Mr. Ronald L. Van De Hey, Outagamie County Executive, 410 South Walnut Street, Appleton, Wisconsin 54911.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Issued: December 9, 1992.

C.M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 92-30490 Filed 12-16-92; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 97

[PR Docket No. 92-289; FCC 92-533]

Notice of Creation of 222-225 MHz and 1240-1300 MHz Frequency Bands

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This proposal would create a small new sub-band and at 222.00-222.15 MHz where repeaters would be prohibited. It would also authorize frequency privileges for Novice Class operators in the entire 222-225 MHz band. Further, it would allow Novice Class operators to be licensees and control operators of repeaters in the 222-225 MHz band as well as in the 1270-1295 MHz segment of the 1240-1300 MHz band. The proposed rules are necessary so that there will be a small segment in the 222-225 MHz band where frequencies need not be shared with repeaters. Also, the proposed rules are needed to improve the operational standards for the amateur service. The effects of the proposed rule changes are to enhance experimentation possibilities, to provide Novices with opportunities to become more proficient in amateur service operations, and to use available spectrum more efficiently

DATES: Comments are due on or before February 23, 1993. Reply comments are due on or before March 23, 1993.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Maurice J. DePont, Federal Communications Commission, Private Radio Bureau, Washington, DC 20554, (202) 632-4964.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, adopted November 30, 1992, and released December 11, 1992. The complete text of this Commission action, including the proposed rule amendments, is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this Notice of Proposed Rule Making, including the proposed rule amendments, may also be purchased from the Commission's copy contractor, Downtown Copy Center (DCC), (202) 452-1422, 1990 M Street, NW., suite 640, Washington, DC 20036. DCC's FAX number is (202) 296-3780.

SUMMARY OF NOTICE OF PROPOSED RULE MAKING: 1. The proposed rule changes respond to petitions filed by The American Radio Relay League, Inc. (ARRL) and Dr. Michael C. Trahos. The ARRL requests that 222.00-222.15 MHz be designated as a frequency segment where repeaters are not allowed. The ARRL believes that a rule is needed to protect experimentation and other operations from repeater interference. In response to this request, some commenters argue that such a matter should be decided by the local frequency coordinator. The ARRL also requests expansion of the frequency privileges for Novice Class operators to encompass the entire 222-225 MHz band. Dr. Trahos requests that Novice Class operators be authorized to be licensees and control operators of repeaters in the 222-225 MHz band and in the 1270-1295 MHz Novice subband.

2. The proposed rules offer improvements in the operational standards for the amateur service. Experimentation would be facilitated. Novice Class operators could become more proficient in a wider variety of amateur service operations. They would also have more flexibility in selecting the mode of transmission. Choosing the appropriate mode would result in spectrum efficiency.

3. Comments are invited on the effect that the proposed rule changes would have on Novice Class licensees.

4. The proposed rules are set forth at the end of this document.

5. This is a non-restricted notice and comment rule making proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission rules. See generally 47 CFR 1.1202, 1.1203, and 1.1206(a).

6. In accordance with Section 605(b) of the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that the proposed rules would not, if promulgated, have a significant economic impact on a substantial number of small business entities because the amateur stations that are the subject of this proceeding would not be authorized to transmit any communications that facilitate the business or commercial affairs of any party. See 47 CFR 97.113(a).

7. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501-3520, and found to contain

no new or modified form, information collection and/or record retention requirements, and will not increase or decrease burden hours imposed on the public.

8. This Notice of Proposed Rule Making and the proposed rule amendments are issued under the authority of sections 4(i) and 303 (c), (f), and (r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303 (c), (f), and (r).

9. A copy of this Notice of Proposed Rule Making will be forwarded to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 97

License privileges, Radio, Subbands.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Proposed Rules

Part 97 of Chapter I of Title 47 of the Code of Federal Regulations is proposed to be amended as follows:

PART 97—AMATEUR RADIO SERVICE

1. The authority citation for Part 97 continues to read as follows:

Authority citation: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609, unless otherwise noted.

2. Section 97.201(b) is revised to read as follows:

§ 97.201 Auxiliary station.

* * * * *

(b) An auxiliary station may transmit only on the 1.25 m and shorter wavelength frequency bands, except the 222.00–222.15 MHz, 431–433 MHz, and 435–438 MHz segments.

* * * * *

3. Paragraphs (a) and (b) of § 97.205 are revised to read as follows:

§ 97.205 Repeater station.

(a) Any amateur station may be a repeater. A holder of any class operator license may be the control operator of a repeater, subject to the privileges of the class of operator license held.

(b) A repeater may receive and retransmit only on the 10 m and shorter wavelength frequency bands except the 28.0–29.5 MHz, 50.0–51.0 MHz, 144.0–144.5 MHz, 145.5–146.0 MHz, 222.00–222.15 MHz, 431.0–433.0 MHz, and 435.0–438.0 MHz segments.

* * * * *

4. The entry under VHF in § 97.301(f) is amended by revising the frequencies authorized for use by Novice Class operators in ITU Region 2 to read as follows:

§ 97.301 Authorized frequency bands.

* * * * *

(f) For a station having a control operator holding a Novice Class operator license:

Wavelength band	ITU region 1	ITU region 2	ITU region 3	Sharing requirements see § 97.303, paragraph:
VHF				
1.25 m	MHz	MHz 222–225	MHz	(a)
• • • • • • •				

[FR Doc. 92–30533 Filed 12–16–92; 8:45 am]

BILLING CODE 6712–01–M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1152 and 1201

[Ex Parte No. 274 (Sub-No. 26)]

Abandonment Proceedings: Elimination of the Review and Cost Data For All Years Prior to the Base Year Period

AGENCY: Interstate Commerce Commission.

ACTION: Proposed rule; extension of comment due date.

SUMMARY: By decision served November 9, 1992 (57 FR 53307, November 9, 1992), the Commission sought public comment by December 24, 1992, on the proposal to eliminate the requirement that abandonment applications include revenue and cost data for the two prior calendar years and that part of the current year prior to the filing of the application. By letter filed December 4, 1992, the Association of American Railroads (AAR) requests a 30-day extension until January 25, 1993, of the comment due date. AAR indicates additional time is needed because the current schedules of AAR's counsel and member road personnel do not permit sufficient time for an adequate and coordinated response on behalf of the railroad industry. The request will be granted.

DATES: Comments on the proposed changes are due on or before January 25, 1993.

ADDRESSES: Send an original and 10 copies of comments, referring to Ex Parte No. 274 (sub-No. 26), to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: William T. Bono, (202) 927–5720; James R. Wells, (202) 927–6238 [TDD for hearing impaired: (2) 927–5721]

Decided: December 11, 1992.

By the Commission, Sidney L. Strickland, Jr., Secretary.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–30662 Filed 12–16–92; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018—AB89

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for 22 Plants From the Island of Hawaii, State of Hawaii

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes endangered status pursuant to the Endangered Species Act of 1973, as amended (Act), for 22 plants: *Clermontia lindseyana* ('oha wai), *Clermontia peleana* ('oha wai), *Clermontia pyrularia* ('oha wai),

Colubrina oppositifolia (kauila), *Cyanea copelandii* ssp. *copelandii* (haha), *Cyanea hamatiflora* ssp. *carlsonii* (haha), *Cyanea shipmanii* (haha), *Cyanea stictophylla* (haha), *Cyrtandra giffardii* (ha'iwale), *Cyrtandra tintinnabula* (ha'iwale), *Hesperocnide sandwicensis* (no common name (NCN)), *Ischaemum byrone* (Hilo ischaemum), *Isodendrion pyrifolium* (wahine noho kula), *Mariscus fauriei* (NCN), *Nothocestrum breviflorum* ('aiea), *Ochrosia kilaueaensis* (holei), *Plantago hawaiensis* (laukahi kuahiwi), *Portulaca sclerocarpa* (po'e), *Pritchardia affinis* (loulu), *Silene hawaiiensis* (NCN), *Tetramolopium arenarium* (NCN), and *Zanthoxylum hawaiiense* (a'e). All but seven of the taxa are or were endemic to the island of Hawaii, Hawaiian Islands; the exceptions are or were found on the islands of Niihau, Kauai, Oahu, Molokai, Lanai, and/or Maui as well as Hawaii. The 22 plant taxa and their habitats have been variously affected or are currently threatened by one or more of the following: competition for space, light, water, and nutrients by naturalized, introduced vegetation; habitat degradation by wild, feral, or domestic animals (axis deer, cattle, goats, pigs, and sheep); agricultural, military, and recreational activities; habitat loss and damage to plants from fires; predation by animals (cattle, goats, insects, and rats); and natural disasters (flooding and volcanic activity). Due to the small number of existing individuals and their very narrow distributions, these taxa and most of their populations are subject to an increased likelihood of extinction and/or reduced reproductive vigor from stochastic events. This proposal, if made final, would implement the Federal protection and recovery provisions provided by the Act. If made final, it would also make operative State regulations protecting these plants as endangered species. Comments and materials related to this proposal are solicited.

DATES: Comments from all interested parties must be received by February 16, 1993. Public hearing requests must be received by February 1, 1993.

ADDRESSES: Comments and materials concerning this proposal should be sent to Robert P. Smith, Field Supervisor, Pacific Islands Office, U.S. Fish Wildlife Service, 300 Ala Moana Boulevard, room 6307, P.O. Box 50167, Honolulu, Hawaii 96850. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Derral R. Herbst, at the above address (808/541–2749).

SUPPLEMENTARY INFORMATION:

Background

Clermontia lindseyana, Clermontia peleana, Clermontia pyrularia, Colubrina oppositifolia, Cyanea copelandii ssp. *copelandii, Cyanea hamatiflora* ssp. *carlsonii, Cyanea shipmanii, Cyanea stictophylla, Cyrtandra giffardii, Cyrtandra tintinnabula, Hesperocnide sandwicensis, Ischaemum byrone, Isodendrion pyrifolium, Mariscus fauriei, Nothocestrum breviflorum, Ochrosia kilaueaensis, Plantago hawaiiensis, Portulaca sclerocarpa, Pritchardia affinis, Silene hawaiiensis, Tetramolopium arenarium,* and *Zanthoxylum hawaiiense* are endemic to or have the majority of their populations on the island of Hawaii, Hawaiian islands. Thirteen of these taxa are endemic to the island of Hawaii; three additional taxa are now found only on Hawaii. One of these taxa is now or was previously also known from Niihau, one from Kauai, two from Oahu, four from Molokai, four from Lanai, and six from Maui.

The island of Hawaii is the southernmost, furthest east, and the youngest of the eight major Hawaiian Islands. This largest island of the Hawaiian archipelago comprises 4,038 square miles (sq mi) (10,458 sq kilometers (km)), or two-thirds of the land area of the State of Hawaii, giving rise to its common name, the "Big Island." The Hawaiian Islands are volcanic islands formed over a "hot spot," a fixed area of pressurized molten rock deep within the Earth. As the Pacific Plate, a section of the Earth's surface many miles thick, has moved to the northwest, the islands of the chain have separated. Currently, this hot spot is centered under the southeast part of the island of Hawaii, which is one of the most active volcanic areas on Earth. Five large shield volcanoes make up the island of Hawaii: Mauna Kea at 13,796 feet (ft) (4,205 meters (m)) and Kohala at 5,480 ft (1,670 m), both extinct; Hualalai, at 8,271 ft (2,521 m), which is dormant and will probably erupt again; and Mauna Loa, at 13,677 ft (4,169 m) and Kilauea, at 4,093 ft (1,248 m), both of which are currently active and adding land area to the island. Compared to Kauai, which is the oldest of the main islands and was formed about 5.6 million years ago, Hawaii is very young, with fresh lava and land up to 0.5 million years old (Cuddihy and Stone 1990, Culliney 1988, Department of Geography 1983, Macdonald *et al.* 1983).

Because of the large size and range of elevation of the island, Hawaii has a great diversity of climates. Windward (northeastern) slopes of Mauna Loa have rainfall up to 300 inches (in) (762 centimeters (cm)) per year in some areas. The leeward coast, shielded by the mountains from rain brought by trade winds, has areas classified as desert and receiving as little as 7.9 in (20 cm) of rain annually. The summits of Mauna Loa and Mauna Kea experience snowfall each year, and Mauna Kea was glaciated during the last Ice Age (Culliney 1988, Department of Geography 1983, Macdonald *et al*, 1983, Wagner *et al.* 1990).

Plant communities on Hawaii include those in various stages of primary succession on the slopes of active and dormant volcanoes, ones in stages of secondary succession following disturbance, and relatively stable climax communities. On Hawaii, vegetation is found in all classifications: Coastal, dryland, montane, subalpine, and alpine; dry, mesic, and wet; and herblands, grasslands, shrublands, forests, and mixed communities. The vegetation and land of the island of Hawaii have undergone much change through the Island's history. Since it is an area of active volcanism, vegetated areas are periodically replaced with bare lava. Polynesian immigrants, first settling on Hawaii by 750 A.D., made extensive alterations in lowland areas for agriculture and habitation. European contact with Hawaii brought intentional and inadvertent introductions of alien plant and animal species. In 1960, 65 percent of the total land area of the island of Hawaii was used for grazing, and much land has also been converted to modern cropland (Cuddihy and Stone 1990, Gagne and Cuddihy 1990).

The 22 taxa proposed in this rule occur between sea level and 8,600 ft (0 and 2,260 m) in elevation in various portions of the island of Hawaii. A few taxa are also found in central Kauai (one taxon), in the Waianae Mountains of Oahu (one taxon), on Eastern Molokai (three taxa), in central and southern Lanai (two taxa), and on East Maui (three taxa). Most of the proposed species exist as remnant plants persisting in grazed areas or in higher elevations which have only recently been heavily invaded by alien plant and animal species. The proposed taxa grow in a variety of vegetation communities (herbland, shrublands, and forests), elevational zones (coastal, lowland, montane, and subalpine), and moisture regimes (dry, mesic, and wet). One

taxon is found in each of two coastal habitats: Dry shrubland and mesic forest. In lowland habitats, five taxa are found in dry forest, four in mesic forest, and two in wet forest. In montane habitats, one taxon is found in wet herbland, three taxa in dry shrubland, three in dry forest, four in mesic forest, and five in wet forest. In the subalpine area, one taxon is found in dry shrubland and two taxa in dry forest.

The land on which these 22 plant taxa are found is owned by various private parties, the State of Hawaii (including conservation district lands, forest reserves, natural area reserves, State parks, and the State seabird sanctuary), or is owned or managed by the Federal government (including a U.S. Fish and Wildlife Service refuge, a U.S. Army military reservation and a military training area, a National Park, and a U.S. Coast Guard lighthouse area).

Discussion of the 22 Taxa Proposed for Listing

Rock (1957) named *Clermontia hawaiiensis* var. *grandis* on the basis of sterile specimens collected on the island of Hawaii in the 1950s. Later, after examining fertile material, he named the taxon *C. lindseyana* and also described a variety, var. *livida* (Rock 1962). The specific epithet commemorates Thomas Lindsey, a naturalist who brought the species to Rock's attention. St. John (1987a) described two other species, *C. albimontis* and *C. viridis*, but the author of the current treatment of the genus (Lammers 1990, 1991) considers St. John's species to fall within the range of *C. lindseyana* and recognizes no subspecific taxa.

Clermontia lindseyana of the bellflower family (Campanulaceae) is a terrestrial or epiphytic (not rooted in the soil) branched shrub or tree 8.2 to 20 ft (2.5 to 6 m) tall. The alternate, stalked, toothed leaves are 5 to 9 in (13 to 24 cm) long and 1.5 to 2.6 in (3.8 to 6.5 cm) wide. Two flowers, each with a stalk 0.4 to 1 in (1 to 2.5 cm) long, are positioned at the end of a main flower stalk 1 to 1.6 in (2.5 to 4 cm) long. The calyx (fused sepals) and corolla (fused petals) are similar in size and appearance, and each forms a slightly curved, five-lobed tube 2.2 to 2.6 in (5.5 to 6.5 cm) long and 0.4 to 0.7 in (0.9 to 1.8 cm) wide which is greenish white or purplish on the outside and white or cream-colored on the inside. The berries are orange and 1 to 1.6 in (2.5 to 4 cm) in diameter. This species is distinguished from others in this endemic Hawaiian genus by larger leaves and flowers, similar sepals and petals, and spreading floral lobes (Cuddihy *et al.* 1983; Lammers 1990, 1991).

Historically, *Clermontia lindseyana* was known from the island of Maui on the southern slope of Haleakala and from the island of Hawaii on the eastern slope of Mauna Kea and the eastern, southeastern, and southwestern slopes of Mauna Loa. One population of the species is known to be extant on Maui in Wailaulau Gulch on State-owned land. The 13 known populations on the island of Hawaii extend over a distance of about 53 by 13 mi (85 by 21 km). Populations are found near Laupahoehoe, in Piha, in Makahanaloa, near Puaakala, near Puu Oo, near Kulani Correctional Facility, near Kapapala, in Waiea Tract, near Kaapuna Lava Flow, and near Kahuku on privately and State-owned land. Approximately 125 to 175 individuals exist (Hawaii Heritage Program (HHP) 1991a1 to 1991a13). This species typically grows in *Acacia koa* (koa)—and *Metrosideros polymorpha* ('ohi'a)—dominated Montane Mesic Forests, often epiphytically, at elevations between 4,000 and 7,050 ft (1,220 and 2,150 m) (Gagne and Cuddihy 1990; HHP 1991a1 to 1991a13; Hawaii Plant Conservation Center (HPCC) 1991a; Lammers 1990, 1991). Associated species include *Coprosma* sp. (pilo), *Ilex anomala* (kawa'u), and *Myrsine* sp. (kolea) (HHP 1991a2, 1991a5; HPCC 1991a; Fern Duvall, Olinda Endangered Species Propagation Facility, pers. comm., 1992). The major threats to *Clermontia lindseyana* are competition from alien plant species such as *Passiflora mollissima* (banana poka) and *Pennisetum clandestinum* (Kikuyu grass), grazing and trampling by *Bos taurus* (cattle), and habitat disturbance by feral *Sus scrofa* (pigs) Cuddihy *et al.* 1983; HPCC 1991a; Pratt and Cuddihy 1991; F. Duvall and Arthur Medeiros, Haleakala National Park, pers. comms., 1992).

Clermontia peleana was first collected by John Lydgate at Hamakua, island of Hawaii, and listed as an unnamed variety of *C. gaudichaudii* by Hillebrand (1888). Rock later collected a specimen of the taxon near Kilauea, the volcano home of the Hawaiian goddess Pele, after whom he named the species (Rock 1913). Other names by which the species has been known include: *Clermontia gaudichaudii* var. *singuliflora* (Rock 1919b), *C. singuliflora* (Rock 1919b), *C. gaudichaudii* var. *barbata* (Rock 1919b), *C. clermontioides* var. *singuliflora* (Hochreutiner 1934); *C. clermontioides* var. *mauiensis*, a superfluous name (Hochreutiner 1934); and *C. clermontioides* var. *barbata* (St. John 1973). In the most recent treatment of the species (Lammers 1991), two subspecies of *C. peleana*, ssp. *singuliflora* and ssp. *peleana*, are recognized.

Clermontia peleana of the bellflower family is an epiphytic shrub or tree 5 to 20 ft (1.5 to 6 m) tall which grows on 'ohi'a, koa, *Cheirodendron trigynum* ('olapa), and *Sadleria* spp. (ama'u). The alternate, stalked, oblong or oval, toothed leaves reach a length of 3 to 8 in (8 to 20 cm) and a width of 1.2 to 2 in (3 to 5 cm). Flowers are single or paired, each on a stalk 1.2 to 1.8 in (3 to 4.5 cm) long with a main stalk 0.3 to 0.7 in (0.8 to 1.7 cm) long. Five small green calyx lobes top the hypanthium (basal portion of the flower). The blackish-purple (ssp. *peleana*) or greenish-white (ssp. *singuliflora*) petals, 2 to 2.8 in (5 to 7 cm) long and 0.3 to 0.5 in (0.8 to 1.3 cm) wide, are fused into a one-lipped, arching tube with five downcurved lobes. Berries of ssp. *peleana* are orange and 1 to 1.2 in (2.5 to 3 cm) in diameter; berries of ssp. *singuliflora* are unknown. This species is distinguished from others of the genus by its epiphytic growth habit; its small green calyx lobes; and its one-lipped, blackish-purple or greenish-white corolla (Lammers 1990, 1991).

Historically, *Clermontia peleana* ssp. *peleana* has been found only on the island of Hawaii on the eastern slope of Mauna Loa and the northeastern and southeastern slopes of Mauna Kea. Today, the taxon is found near Waiakaumalo Stream, by the Wailuku River, near Saddle Road, and between the towns of Glenwood and Volcano. The six known populations, which extend over a distance of about 12 by 5 mi (19 by 8 km), are located on State and Federally owned land and contain a total of approximately eight known individuals (HHP 1991b1 to 1991b7). *Clermontia peleana* ssp. *singuliflora* was formerly found on the island of Hawaii on the northern slope of Mauna Kea and on East Maui on the northwestern slope of Haleakala, but the taxon has not been seen in either place since early in the century and is believed to be extinct (HHP 1991c1 to 1991c3, Wagner *et al.* 1990). This species typically grows epiphytically in Montane Wet Forests dominated by koa, 'ohi'a, and *Cibotium* spp. and/or *Sadleria* spp. (tree ferns) at elevations between 1,740 and 3,800 ft (530 and 1,160m) (HHP 1991b1 to 1991b4, 1991b6, 1991b7; Lammers 1990, 1991). Associated species include 'olapa, *Melicope clusiifolia* (kolokolo mokihana), and *Scaevola chamissoniana* (naupaka kuahiwi) (HHP 1991b1; Warren L. Wagner, Smithsonian Institution, pers. comm., 1992). The major threats to *Clermontia peleana* are

habitat disturbance caused by feral pigs and illegal cultivation of *Cannabis sativa* (marijuana), *Rattus rattus* (roof or black rat) damage, flooding, and stochastic extinction and/or reduced reproductive vigor due to the small number of existing individuals (Bruegmann 1990, Center for Plant Conservation (CPC) 1990b).

A sterile specimen of *Clermontia pyrularia* was first collected on Mauna Kea, island of Hawaii, during the United States Exploring Expedition of 1840 and 1841 and was named *Delissea obtusa* var. ? *mollis* by Gray (1861b). Later, Hillebrand (1888) collected fertile specimens of the taxon and named it *C. pyrularia*, referring in the specific epithet to the fruits, which are sometimes shaped like those of *Pyrus* (pear).

Clermontia pyrularia of the bellflower family, a terrestrial tree 10 to 13 ft (3 to 4 m) tall, has alternate toothed leaves 5.9 to 11 in (15 to 28 cm) long and 1 to 2 in (2.5 to 5 cm) wide with winged petioles. A cluster of two, three, or sometimes up to five flowers has a main stalk 1.1 to 2.4 in (2.8 to 6 cm) long; each flower has a stalk 0.3 to 0.8 in (0.8 to 2 cm) long. Five small green calyx lobes top the hypanthium. The white or greenish-white petals are covered with fine hairs, measure 1.6 to 1.8 in (4 to 4.5 cm) long, and are fused into a curved two-lipped tube 0.2 to 0.3 in (5 to 8 mm) wide with five spreading lobes. The orange berry is inversely ovoid or inversely pear-shaped. This species is distinguished from others of the genus by its winged petioles; its small, green calyx lobes; its two-lipped flowers with white or greenish-white petals; and the shape of its berry (Lammers 1990, 1991).

Historically, *Clermontia pyrularia* has been found only on the island of Hawaii on the northeastern slope of Mauna Kea, the western slope of Mauna Loa, and the saddle area between the two mountains. Today, the species is found near the Humuula-Laupahoehoe boundary, near Hakalau Gulch, near Kealakekua, and near Kaawaloa. The five extant populations, which extend over a distance of about 47 by 6 mi (76 by 10 km), are located on privately, State, and Federally owned land. Although the exact number of individuals is not known, it is likely that not more than five individuals exist (HHP 1991d1 to 1991d6). This species typically grows in koa- and/or'ohi'a-dominated Montane Wet Forests and Subalpine Dry Forests at elevations between 3,000 and 7,000 ft (910 and 2,130 m) (HHP 1991d2 to 1991d5; Lammers 1990, 1991). Associated species include pilo, *Lythrum maritium* (pukamole), and *Rubus hawaiensis* ('akala) (HHP 1991d2, 1991aa). The major threat to *Clermontia pyrularia* is competition from alien grasses and shrubs in the forest understory and banana poka as well as stochastic extinction and/or reduced reproductive vigor due to the small number of existing populations and individuals (HHP 1991d2).

Colubrina oppositifolia was first collected by Remy in the 1850s and was named in 1867 by Adolphe Theodore Brongniart (Mann 1867). The specific epithet describes the plant's opposite leaf arrangement. St. John (1979) called Oahu plants *C. oppositifolia* var. *obatae*, but no subspecific taxa are recognized in the current treatment of the genus (Wagner *et al.* 1990).

Colubrina oppositifolia of the buckthorn family (Rhamnaceae), a tree 16 to 43 ft (5 to 13m) tall, has opposite, stalked, oval, thin, pinnately veined, toothless leaves with glands on the lower surface. Leaves measure 2.4 to 4.7 in (6 to 12 cm) long and 1.2 to 2.8 in (3 to 7 cm) wide in mature plants and are larger in seedlings. Ten to 12 bisexual flowers are clustered at the end of a main stalk 0.1 to 0.3 in (3 to 8 millimeters (mm)) long; each flower has a stalk about 0.07 to 0.1 in (2 to 3 mm) long which elongates in fruit. The five triangular sepals measure about 0.06 to 0.08 in (1.5 to 2 mm) long, and the five greenish-yellow or white petals are about 0.06 in (1.5 mm) long. The somewhat spherical fruit, 0.3 to 0.4 in (8 to 11 mm) long, is similar to a capsule and opens explosively when mature. This species can be distinguished from the one other species of the genus in Hawaii by its growth habit and the arrangement, texture, venation, and margins of its leaves (Wagner *et al.* 1990).

Historically, *Colubrina oppositifolia* was found on the island of Oahu in the central and southern Waianae Mountains and on the island of Hawaii in the following areas: The Kohala Mountains; the northern slope of Hualalai; and the western, southwestern, and southern slopes of Mauna Loa. Today, the species is known on Oahu in eastern Makaleha Valley, Mokuleia Forest Reserve, and Makua Valley; on Mt. Kaala; and near Honouliuli Contour Trail on private, State-owned, and Federally managed land. The 6 extant populations on Oahu, which extend over a distance of about 9 by 4 mi (14 by 6 km), contain approximately 94 known individuals (HHP 1991e1, 1991e2, 1991e5, 1991e9 to 1991e12). On the island of Hawaii, there are 7 extant populations which extend over a distance of about 16 by 4 mi (26 by 6 km), are located on privately and State-owned land, and contain about 185 to 205 known individuals. The species occurs along the Mamalahoa Highway on the northern slope of Hualalai as well as in Kapua and Puueo in the southernmost portion of the island (HHP 1991e3, 1991e4, 1001e6 to 1991e8, 1991e13 to 1991e16). This species typically grows in *Diospyros sandwicensis* (lama)-dominated Lowland Dry and Mesic Forests, often on a lava, at elevations between 800 and 3,000 ft (240 and 910m). Associated species include *Canthium odoratum* (alahe'e) and *Reynoldsia sandwicensis* ('ohe) (HHP 1991e3, 1991e8, 1991e9, 1991e15, 1991e16, HPCC 1991b). The major threats to *Colubrina oppositifolia* are competition from alien plant species such as *Lantana camara* (lantana), *Pennisetum setaceum* (fountain grass), and *Schinus terebinthifolius* (Christmas berry); habitat disturbance by feral pigs; plant damage and death from *Xylosandrus compactus* (black twig borer); fire; damage and disturbance from military exercises; and limited regeneration (HHP 1991e4, 1991e8, 1991e9, 1991e15, 1991e16; Joel Q. Lau, The Nature Conservancy of Hawaii, pers. comm., 1992).

Rock (1917) named *Cyanea copelandii* to honor his collecting companion, M.L. Copeland, with whom he first collected the species in 1914 on the island of Hawaii (Rock 1917). St. John (1987b, 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. copelandii*. The current treatment of the family (Lammers 1990), however, maintains the separation of the two genera, and plants found on the island of Hawaii are considered to be *C. copelandii* ssp. *copelandii*. Subspecies *haleakalaensis*, found on Maui, is not as rare.

Cyanea copelandii ssp. *copelandii* of the bellflower family is a shrub with a habit similar to that of a woody vine. The alternate, stalked, toothed leaves are 7.9 to 10.6 in (20 to 27 cm) long and 1.4 to 3.3 in (3.5 to 8.5 cm) wide and have fine hairs on the lower surface. Five to 12 flowers are clustered on the end of a main stalk 0.8 to 1.8 in (2 to 4.5 cm) long; each flower has a stalk 0.2 to 0.6 in (0.4 to 1.6 cm) long. The slightly hairy hypanthium is topped by five small, triangular calyx lobes. Petals, which are yellowish but appear rose-colored because of a covering of dark red hairs, are fused into a curved tube with five spreading lobes; the corolla is 1.5 to 1.7 in (3.7 to 4.2 cm) long about 0.2 in (4 to 5 mm) wide. Berries are dark orange and measure 0.3 to 0.6 in (0.7 to

1.5 cm) long. This subspecies is distinguished from ssp. *haleakalaensis*, the only other subspecies of *Cyanea copelandii*, by its narrower leaves. The species differs from others in this endemic Hawaiian genus by its growth habit and the size, shape, and dark red pubescence of its corolla (Lammers 1990).

Cyanea copelandii ssp. *copelandii*, which has been collected only at two sites on the southeastern slope of Mauna Kea near Glenwood, was last seen in 1957. This population, located on State-owned land, is still considered extant and contains an unknown number of individuals (HHP 1991f; Thomas Lammers, Field Museum, pers. comm., 1992). This taxon often grows epiphytically and is typically found in Montane Wet Forests at elevations between 2,200 and 2,900 ft (660 and 880 m) (Lammers 1990). Associated species include tree ferns (HHP 1991f). The major known threat to *Cyanea copelandii* ssp. *copelandii* is stochastic extinction and/or reduced reproductive vigor due to the single known population.

Using sterile type material, Rock (1957) named *Cyanea carlsonii* to honor Norman K. Carlson, who first saw the taxon (Degener *et al.* 1969). Carlson cultivated a plant of the taxon in his garden, from which Rock later described the flowers and fruit (Rock 1962). Recently, St. John (1987b, St. John and Takeuchi 1987) placed the genus *Cyanea* in synonymy with *Delissea*, resulting in the new combination *Delissea carlsonii*, but Lammers (1990) retains both genera in the currently accepted treatment of the family. He also considers the taxon to be a subspecies of another species, resulting in the name *C. hamatiflora* ssp. *carlsonii* (Lammers 1988).

Cyanea hamatiflora ssp. *carlsonii* of the bellflower family, a palm-like tree, grows 9.8 to 26 ft (3 to 8 m) tall and has alternate stalkless leaves 20 to 31 in (50 to 80 cm) long and 3 to 5.5 in (8 to 14 cm) wide. Clusters of 5 to 10 flowers have a main stalk 0.6 to 1.2 in (1.5 to 3 cm) long; each flower has a stalk 0.2 to 0.5 in (0.5 to 1.2 cm) long. The hypanthium is topped with five small narrow calyx lobes. The magenta petals are fused into a one-lipped tube 2.3 to 3.1 in (6 to 8 cm) long and 0.2 to 0.4 in (0.6 to 1.1 cm) wide with five downcurved lobes. The purplish-red berries are topped by the persistent calyx lobes. This subspecies is distinguished from ssp. *hamatiflora*, the only other subspecies, by its long flower stalks and larger calyx lobes. The species differs from others in the genus by its growth habit, its stalkless leaves, the number of flowers in each cluster, and the size and shape of the corolla and calyx (Lammers 1990).

Cyanea hamatiflora ssp. *carlsonii* is only known to have occurred at two sites on the island of Hawaii, on the western slope of Hualalai and the southwestern slope of Mauna Loa. These 2 extant populations, located on privately and State-owned land at Honuaulu Forest Reserve and Keokea, are about 28 mi (45 km) apart and contain approximately 19 individuals (HHP 1991gl, 1991g2; HPCC 1991c1 to 1991c3). This taxon typically grows in 'ohi'a-dominated Montane Wet Forests at elevations between 4,000 and 5,700 ft (1,220 and 1,740 m) (HHP 1991g1, 1991g2; Lammers 1990). Associated species include kawa'u, pilo and *Myoporum sandwicense* (naio) (HHP 1991g1). The major threats to *Cyanea hamatiflora* ssp. *carlsonii* are competition from alien plant species such as banana poka, grazing and trampling by cattle, and stochastic extinction and/or reduced reproductive vigor due to the small number of existing populations and individuals (HHP 1991g2; Carolyn Corn, Hawaii Department of Land and Natural Resources (Hawaii DLNR), *in litt.*, 1991).

Based on sterile specimens collected on the island of Hawaii during the United States Exploring Expedition of 1840 and 1841, Gray (1861b) noted *Cyanea grimesiana* var. ? *citrullifolia*. Rock collected the plant in 1955 in the company of Herbert Shipman, after whom he named it as a species, resulting in *Cyanea shipmanii* (Rock 1957).

Cyanea shipmanii of the bellflower family is an unbranched or few-branched shrub 8 to 13 ft (2.5 to 4 m) tall with small sharp projections, especially in young plants. The alternate, stalked leaves are 6.7 to 12 in (17 to 30 cm) long, 2.8 to 5.5 in (7 to 14 cm) wide, and deeply cut into 20 to 30 lobes per leaf. Flowers are covered with fine hairs and are clustered in groups of 10 to 15, the main stalk 0.4 to 1.2 in (1 to 3 cm) long and each flower stalk 0.4 to 0.6 in (1 to 1.5 cm) long. The hypanthium is topped with five small calyx lobes. The pale greenish-white petals, 1.2 to 1.4 in (3 to 3.6 cm) long, are fused into a curved five-lobed tube 0.1 to 0.2 in (3 to 4 mm) wide. The fruit is an ellipsoid berry. This species differs from others in the genus by its slender stems; stalked, pinnately lobed leaves; and smaller flowers (Lammers 1990).

Cyanea shipmanii has only been known from one population, located on the island of Hawaii on the eastern slope of Mauna Kea on privately owned land. When originally discovered, only 1 mature plant was found, with a total population size of less than 50 individuals (HHP 1991h). This species typically grows in koa- and 'ohi'a-dominated Montane Mesic Forests at elevations between 5,400 and 6,200 ft (1,650 and 1,900 m) (HHP 1991h, Lammers 1990). Associated species include kawa'u and kolea (HHP 1991h). The major threat to *Cyanea shipmanii* is stochastic extinction and/or reduced reproductive vigor due to the single existing population and the small number of known individuals.

Based on a specimen he collected in 1912 on Mauna Loa, island of Hawaii, Rock (1913) described *Cyanea stictophylla*, choosing the specific epithet to refer to the long and narrow leaves. Other names by which the taxon has been known include: *Cyanea palakea* (Forbes 1916), *C. quercifolia* var. *atropurpurea* (Wimmer 1953), *C. stictophylla var. inermis* (Rock 1957), and *C. nelsonii* (St. John 1976). St. John (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. nelsonii*, *D. palakea*, *D. quercifolia* var. *atropurpurea*, *D. stictophylla*, and *D. stictophylla* var. *inermis* (St. John 1987b). The separation of the two genera is maintained in the current treatment of the family (Lammers 1990), and all the above listed taxa are considered to fall within the range of variation of *C. stictophylla*.

Cyanea stictophylla of the bellflower family is a shrub or tree 2 to 20 ft (0.6 to 6 m) tall, sometimes covered with small, sharp projections. The alternate, stalked, oblong, shallowly lobed, toothed leaves are 7.8 to 15 in (20 to 38 cm) long and 1.6 to 3.1 in (4 to 8 cm) wide. Clusters of five or six flowers have main flowering stalks 0.4 to 1.6 in (1 to 4 cm) long; each flower has a stalk 0.3 to 0.9 in (0.7 to 2.2 cm) long. The hypanthium is topped with five calyx lobes 0.1 to 0.2 in (2 to 4 mm) long and 0.04 and 0.1 in (1 to 2 mm) wide. The yellowish-white or purple petals, 1.4 to 2 in (3.5 to 5 cm) long, are fused into an arched, five-lobed tube about 0.2 in (5 to 6 mm) wide. The spherical berries are orange. This species differs from others in the genus by its lobed, toothed leaves and its larger flowers with small calyx lobes and deeply lobed corollas (Lammers 1990).

Historically, *Cyanea stictophylla* was known only from the island of Hawaii on the western, southern, southeastern, and eastern slopes of Mauna Loa. Today, the species is known to be extant near Keauhou and in South Kona on privately owned land. The 3 known

populations, which extend over a distance of about 38 by 10 mi (61 by 16 km), contain a total of approximately 15 individuals (HHP 1991i1 to 1991i3). This species, sometimes growing epiphytically, is found in koa- and 'ohi'a-dominated Lowland Mesic and Wet Forests at elevations between 3,500 and 6,400 ft (1,070 and 1,950 m) (HHP 1991i1 to 1991i3, Lammers 1990). Associated species include tree ferns, *Melicope volcanica* (alani), and *Urera glabra* (opuhe) (HHP 1991i1 to 1991i3). The major threat to *Cyanea stictophylla* is grazing and trampling by feral cattle as well as stochastic extinction and/or reduced reproductive vigor due to the small number of existing populations and individuals (F. Duvall, pers. comm., 1992).

Cyrtandra giffardii was first collected in 1911 on the island of Hawaii by Rock, who named the species to honor Walter M. Giffard, who collected a flowering specimen in 1918 (Rock 1919a).

Cyrtandra giffardii of the African violet family (Gesneriaceae) is a shrubby tree usually 10 to 20 ft (3 to 6 m) tall. The opposite, stalked, papery-textured, toothed leaves are usually 2.4 to 4.7 in (6 to 12 cm) long and 1 to 1.8 in (2.5 to 4.6 cm) wide and have a few tiny, coarse hairs on the upper surface. Clusters of three to five flowers have a moderate amount of short brown hairs throughout the cluster, a main stalk 1 to 1.4 in (2.5 to 3.5 cm) long, two linear bracts about 0.25 in (6 to 7 mm) long, and individual flower stalks 0.6 to 1.2 in (1.5 to 3 cm) long. The calyx, 0.1 to 0.4 in (3 to 9 mm) long, has an outer covering of short, soft brown hairs and is divided into five narrowly triangular lobes. The corolla consists of five fused white petals about 0.5 in (12 mm) long, with lobes about 0.08 to 0.1 in (2 to 3 mm) long. Only immature berries have been observed, and they were white and about 0.4 in (1 cm) long. Both this species and *Cyrtandra tintinnabula* are distinguished from others of the genus and others on the island of Hawaii by a combination of the following characteristics: The opposite, more or less elliptic, papery leaves; the presence of some hairs on the leaves and more on the inflorescences; the presence of three to six flowers per inflorescence; and the size and shape of the flowers and flower parts (Wagner *et al.* 1990).

Historically, *Cyrtandra giffardii* was found on the island of Hawaii on the northeastern slope of Mauna Kea near Kilau Stream and south to the eastern slope of Mauna Loa near Kilauea Center. The 3 extant populations on State-owned land are located near Kilau Stream, Stainback Highway, and Puu Makaala, extending over a distance of approximately 31 by 3 mi (50 by 5 km) and containing a total of about 14 to 20 plants (HHP 1991j1 to 1991j5; W. Wagner, pers. comm., 1992). This species typically grows in shady koa-,'ohi'a-, and tree fern-dominated Montane Wet Forests at elevations between 2,400 and 4,900 ft (720 and 1,500 m) (HHP 1991j1 to 1991j3; HPCC 1991d1, 1991d2, Wagner *et al.* 1990). Associated species include other taxa of *Cyrtandra* (ha'iwale), *Hedyotis* spp., and *Perrottetia sandwicensis* (olomea) (HHP 1991j1 to 1991j3; HPCC 1991d1; W. Wagner, pers. comm., 1992). The major threats to *Cyrtandra giffardii* are habitat disturbance and plant damage by feral pigs as well as stochastic extinction and/or reduced reproductive vigor due to the small number of existing populations (Stone 1985; W. Wagner, pers. comm., 1992).

Based on a plant he collected in 1909 on Mauna Kea, island of Hawaii, Rock named *Cyrtandra tintinnabula*. The specific ephithet describes the bell-shaped calyx of the plant (Rock 1919a).

Cyrtandra tintinnabula of the African violet family is a shrub 3.3 to 6.6 ft (1 to 2 m) tall with opposite, stalked, elliptical or oval, papery-textured leaves 5 to 10 in (13 to 26 cm) long and 2 to 4.8 in (5 to 12.3 cm) wide. Leaves, especially the lower surfaces, have yellowish-brown hairs. Flower clusters, densely covered with long soft hairs, comprise three to six flowers, a main stalk 0.4 to 0.7 in (1 to 1.8 cm) long, individual flower stalks 0.2 to 0.6 in (0.5 to 1.5 cm) long, and leaflike bracts. The green bell-shaped calyx is about 0.4 in (9 to 10 mm) long and has triangular lobes. The hairy white corolla, about 0.5 in (12 mm) long and about 0.2 in (5 mm) in diameter, is divided into five lobes, each about 0.1 in (3 mm) long. Fruit and seeds have not been observed. This species differs from *Cyrtandra giffardii* by its habit, its larger leaves, and its shorter flower stalks (Wagner *et al* 1990).

Historically, *Cyrtandra tintinnabula* was found only on the island of Hawaii on the northern to the eastern slopes of Mauna Kea. Today, 3 populations of the species are known to occur on State-owned land extending over approximately 6 by 1 mi (10 by 3 km) from Kilau Stream to Honohina Gulch and containing approximately 18 known individuals (HHP 1991k1 to 1991k6). This species typically grows in dense koa-, 'ohi'a-, and tree fern-dominated Lowland Wet Forests at elevations between 2,100 and 3,400 ft (650 and 1,040 m) (HHP 1991k3, 1991k4, 1991k6; Wagner *et al.* 1990). Associated species include other kinds of ha'iwale and *Hedyotis* sp. The major threats to *Cyrtandra tintinnabula* are habitat disturbance and plant damage by feral pigs and stochastic extinction and/or reduced reproductive vigor due to the small number of existing populations and individuals.

Based on a specimen collected on Mauna Loa by James Macrae in 1825, Weddell (1856–57) described *Urtica sandwicensis*, choosing the specific epithet to refer to the Sandwich Islands, on older name for the Hawaiian Islands. Later (1869), he transferred the species to another genus, resulting in *Hesperocnide sandwicensis*.

Hesperocnide sandwicensis of the nettle family (Urticaceae) is an erect annual herb 8 to 24 in (20 to 60 cm) tall covered with coarse stinging hairs as well as shorter non-stinging hairs. The opposite, stalked, thin toothed leaves are 0.6 to 3 in (1.5 to 7 cm) long and 0.4 to 1 in (0.9 to 2.5 cm) wide. Most of the small petalless flowers are male, but they are mixed with some female flowers in clusters 0.08 to 0.2 in (2 to 5 mm) long which originate in the leaf axils. Sepals of male flowers are fused into a four-lobed calyx about 0.02 in (0.5 mm) long which encloses four stamens. The calyx of the female flower, about 0.04 in (1 mm) long and enclosing an unstalked stigma, swells slightly in fruit and encloses a flattened achene (dry, one-celled, unopening fruit) about 0.04 in (1.1 mm) long. The only Hawaiian member of the genus, *Hesperocnide sandwicensis* is distinguished from other native Hawaiian genera of its family by its annual herbaceous habit and its stinging hairs. It is distinguished from the alien species *Urtica urens* by the lack of calyx lobes (Wagner *et al.* 1990).

Historically, *Hesperocnide sandwicensis* occurred on the island of Hawaii on the eastern and western slopes of Mauna Kea, the northern to western slopes of Mauna Loa, the Humuula Saddle between Mauna Kea and Mauna Loa, and the southeastern slope of Hualalai. Twelve extant populations are known, extending over a distance of approximately 38 by 15 mi (61 by 24 km) in much of the historic range of the species. It has not been seen on Hualalai for some time and is presumed extinct there. Known populations now occur on or near the following areas: Puu Kanakaleonui, Puu Laau, Ahumoa Cone, Pohakuloa Training Area (PTA), and Sulphur Cone. Because the species is an annual plant, the total number of individuals varies with the time of year and amount of rainfall. Several hundred to a thousand individuals have been found on PTA, a State and Federally owned area of land which is managed by the U.S. Army.

Other, smaller populations totalling approximately 80 to 130 plants are located on privately and State-owned land (HHP 199111 to 199117, HPCC 1991e; Robert Shaw, Colorado State University, pers. comm., 1992). This species typically grows in open mamane- and naio-dominated Subalpine Dry Forests at elevations between 5,840 and 8,600 ft (1,780 and 2,620 m) (Gagne and Cuddihy 1990; HHP 199111 to 199113, 199116; HPCC 1991e; Wagner *et al.* 1990). Associated species include *Asplenium fragile*, *Santalum paniculatum* ('iliahi), and the naturalized *Urtica urens* (dwarf nettle) (HHP 199111, 199116; R. Shaw, pers. comm., 1992). The major threats to *Hesperocnide sandwicensis* are competition from alien grasses such as *Anthoxanthum odoratum* (sweet vernalgrass) and *Holcus lanatus* (common velvet grass); grazing by feral pigs, *Capra hircus* (goats), and *Ovis aries* (sheep); habitat disturbance and damage to plants as a result of military exercises; and fire (HHP 199116; HPCC 1991e; Ken Nagata, U.S. Department of Agriculture, pers. comm., 1992).

Ischaemum byrone was first collected by James Macrae during the expedition of the *Blonde* in 1825 and named *Spodiopogon byronis* by Trinius in 1832. The specific epithet refers to Byron's Bay, now called Hilo Bay, where this specimen was collected. Steudel (1855) transferred the species to the genus *Andropogon*, and in 1889, Hackel redescribed the species, naming it *Ischaemum lutescens*, a superfluous name. In 1922, Hitchcock published *Ischaemum byrone*, the currently accepted name (O'Connor 1990).

Ischaemum byrone of the grass family (Poaceae) is a perennial plant with creeping stems and erect stems 16 to 31 in (40 to 80 cm) tall. The uppermost sheaths (portions of leaves surrounding the stems) are often inflated and sometimes partially enclose the yellow to yellowish-brown racemes (flowering clusters). The hairless leaf blade (the flat extended part of the leaf) is 2.8 to 7.9 in (7 to 20 cm) long and 1.2 to 2 in (3 to 5 cm) wide; the uppermost blades are much smaller in size. Flowers, arranged in two or sometimes three digitate (originating from one point), elongate racemes 1.6 to 3.9 in (4 to 10 cm) long, consist of two types of two-flowered awned (having bristles) spikelets (subclusters of flowers). The fruit is a caryopsis (grain) about 0.1 in (3 mm) long. The only species of the genus found in Hawaii, *Ischaemum byrone* differs from other grasses in the State by its C_4 photosynthetic pathway; its digitate racemes; and its two-flowered, awned spikelets (O'Connor 1990).

Historically, *Ischaemum byrone* was found on Oahu at an unspecified location, on the northeastern coasts of Molokai and East Maui, and along the central portion of the eastern coast of the island of Hawaii. Extant populations still occur on Molokai, Maui, and Hawaii. Two populations on East Molokai are located about 2 mi (3 km) apart at the head of Wailau Valley and on Kikipua Point on privately owned land. Six populations on East Maui are found along approximately 16 mi (26 km) of coast on private, State, and Federally owned land on Pauwalu Point, on Kalahu Point, near Hana, on Kauiki Head, and on the following offshore islets: Keopuka Islet, Mokuhuki Islet, and Puukii Islet. On Hawaii, the species is still found in two populations at Auwae and Kamoamoa on privately and federally owned land. The total distribution of the species includes 10 populations on 3 islands with approximately 1,200 to 2,200 individuals (HHP 1991o1 to 1991o10, 1991o12 to 1991o14). This species typically grows in Coastal Dry Shrublands among rocks or on basalt cliffs at elevations between sea level and 250 ft (0 and 75 m) (Gagne and Cuddihy 1990, O'Connor 1990). Associated species include *Bidens* spp. (ko'oko'olau), *Fimbristylis cymosa*, and *Scaevola sericea* (naupaka kahakai) (HHP 1991o5, 1991o7, 1991o9, 1991o11; HPCC 1991f). The major threats to *Ischaemum byrone* are competition from alien species such as *Digitaria ciliaris* (Henry's crabgrass) and habitat change from volcanic activity (HHP 1991o3; HPCC 1991f; Charles H. Lamoureux, Lyon Arboretum, pers. comm., 1992).

Isodendrion pyrifolium was first collected on Oahu during the United States Exploring Expedition in 1841 and was named by Gray in 1852. The specific epithet refers to the resemblance of the leaves of this species to those of *Pyrus* (pear). In his monograph of the genus, St. John (1952) named the following species, all of which are considered in the current treatment of the genus (Wagner *et al.* 1990) to be synonymous with *I. pyrifolium*: *I. hawaiiense*, *I. hillebrandii*, *I. lanaiense*, *I. molokaiense*, and *I. remyi*.

Isodendrion pyrifolium of the violet family (Violaceae), a shrub about 2.6 to 6.6 ft (0.8 to 2 m) tall, has persistent stipules (leaflike appendages on leaves) and alternate, stalked, elliptic or sometimes lance-shaped, papery leaves which measure 1 to 2.6 in (2.5 to 6.5 cm) long and 0.3 to 1.3 in (0.8 to 3.2 cm) wide. The solitary, bilaterally symmetrical, fragrant flowers have five lance-shaped sepals 0.1 to 0.2 in (3.5 to 5 mm) long with membranous edges fringed with white hairs and three types of clawed (with a narrow petiole-like base) greenish-yellow petals 0.4 to 0.6 in (10 to 15 mm) long with lobes about 0.2 in (4 to 5 mm) long. The three-lobed, 0.5 in (12 mm) long capsule opens to release olive-green seeds about 0.1 in (3 mm) long and about 0.08 in (2 mm) in diameter. This species differs from others in this endemic Hawaiian genus by its slightly smaller, greenish-yellow flowers and by the presence of hairs on the stipule midribs and leaf veins (Wagner *et al.* 1990).

Historically, *Isodendrion pyrifolium* was found at unspecified localities on Niihau, Molokai, and Lanai, as well as on Oahu in the central portion of the Waianae Mountains, on Maui in the northeastern to southwestern regions of the West Maui mountains, and on the island of Hawaii at the western base of Hualalai (HHP 1991p1 to 1991p5, Wagner *et al.* 1990). The species had not been collected since 1870 and was presumed extinct. However, in 1991, four plants were found on Hawaii near Kona in an area being developed as a golf course. A single plant is located about 250 ft (75 m) from a cluster of three other plants on State-owned land (C. Corn, *in litt.* 1991; Francis Blanco, Hawaii Housing and Finance Development Corporation, and K. Nagata, pers. comms., 1992). This species typically grows on dry sites in Lowland Mesic Forests at low elevations (Gagne and Cuddihy 1990, Wagner *et al.* 1990). Associated species include 'iliahi, *Sophora chrysophylla* (mamane), and *Waltheria indica* ('uhaloa) (Paul Weissich, Weissich and Associates, pers. comm., 1992). The major threats to *Isodendrion pyrifolium* are competition from alien species such as fountain grass, fire, and stochastic extinction and/or reduced reproductive vigor due to the single known population and the small number of existing individuals (C. Corn, K. Nagata, and P. Weissich, pers. comms., 1992).

In 1920, Kuekenthal described *Cyperus fauriei* based on a specimen collected by Faurie on Molokai in 1910 (Wagner *et al* 1989). Koyama (1990), in the current treatment of the genus, transferred the species to *Mariscus*, resulting in *M. fauriei*.

Mariscus fauriei of the sedge family (Cyperaceae), a perennial plant with somewhat enlarged underground stems and three-angled, single or grouped aerial stems 4 to 20 in (10 to 50 cm) tall, has leaves shorter than or the same length as the stems and 0.04 to 0.1 in (1 to 3.5 mm) wide. Three to 5 bracts, the lowest one 2.4 to 7.9 in (6 to 20 cm) long, are located under each flower

cluster, which measures 0.8 to 1.6 in (2 to 4 cm) long and 1.2 to 3.9 in (3 to 10 cm) wide and is made up of 3 to 10 spikes (unbranched clusters of unstalked flowers). Each spike measures 0.3 to 1.2 in (0.8 to 3 cm) long and 0.3 to 0.4 in (8 to 10 mm) wide and is made up of compressed spreading spikelets, each comprising seven to nine flowers. Fruits are three-angled achenes about 0.05 in (1.2 mm) long and about 0.03 in (0.7 mm) wide. This species differs from others in the genus in Hawaii by its smaller size and its narrower, flattened, and more spreading spikelets (Koyama 1990).

Historically, *Mariscus fauriei* was found on East Molokai, in the northwestern and southwestern portions of Lanai, and on the island of Hawaii on the northern slope of Hualalai and the northwestern and southernmost slopes of Mauna Loa. A total of 3 extant populations and about 33 to 43 known individuals of the species are found on Molokai and Hawaii, the species is almost certainly extinct on Lanai now. One population of about 20 to 30 plants occurs on Molokai above Kamiloloa on State-owned land. Two populations located about 45 mi (72 km) apart are known on Hawaii on the Hualalai side of Mauna Loa and in the South Point area. The land is privately owned, and there are a total of about 13 known individuals on that island (HHP 1991q1 to 1991q8; HPCC 1991g; Robert Hobdy, Hawaii DLNR, pers. comm., 1992). This species typically grows in lama-dominated Lowland Dry Forests, often on aa substrate, at elevations between 880 and 6,000 ft (300 and 1,830 m) (HHP 1991q8, HPCC 1991g, Koyama 1990). Associated species include alahe'e, *Peperomia* sp. ('ala'ala wai nui), and *Rauvolfia sandwicensis* (hao), (HHP 1991q8, HPCC 1991g). The major threat to *Mariscus fauriei* on Molokai is grazing and trampling by feral goats and *Axis axis* (axis deer), and on Hawaii, competition from alien species such as Christmas berry and *Oplismenus hirtellus* (basketgrass). On both islands, the species is faced with stochastic extinction and/or reduced reproductive vigor due to the small number of existing populations and individuals (HHP 1991q8; HPCC 1991g; R. Hobdy, pers. comm., 1992).

First collected on the island of Hawaii by Charles Pickering during the United States Exploring Expedition of 1840 and 1841, *Nothocestrum breviflorum* was named by Gray in 1862. He chose the specific epithet to refer to the short corolla of the flower of this species. In 1888, Hillebrand name var. *longipes*, but in the current treatment of the genus (Symon 1990), no varieties of the species are recognized.

Nothocestrum breviflorum of the nightshade family (Solanaceae), a stout tree 33 to 39 ft (10 to 12 m) tall with a trunk up to 18 in (45 cm) in diameter, has deciduous, alternate, stalked, oblong or elliptic-oblong, thick and papery-textured, toothless leaves which are 2 to 4.7 in (5 to 12 cm) long and 1.2 to 2.4 in (3 to 6 cm) wide. Numerous bisexual, radially symmetrical flowers are clustered at the ends of short spurs (branches with much shortened internodes) on individual stalks 0.2 to 0.4 in (4 to 10 mm) long. Each flower consists of a 0.2 to 0.4 in (6 to 11 mm) long, four-lobed tubular calyx split on one side and a greenish-yellow four-lobed corolla which barely projects beyond the calyx. The fruit, a somewhat spherical or oblong, orange-red berry about 0.2 to 0.3 in (6 to 8 mm) in diameter, is enclosed by the calyx. Seeds have not been observed. This species can be distinguished from others of this endemic Hawaiian genus by the leaf shape; the clusters of more than three flowers arranged on the ends of short branches; and the broad fruit enclosed by the calyx (Symon 1990).

Historically, *Nothocestrum breviflorum* was found only on the island of Hawaii from the southern portion of the Kohala Mountains; the northern slope of Hualalai; and the eastern, southern, and western slopes of Mauna Loa. Today, extant populations have been found in much of the species' historic range, from near Waimea, near Kiholo, in Puu Waawaa, in HVNP in Kipuka Puaulu and near Holei Pali, and in the South Point area. These 9 populations, which extend over a distance of about 63 by 41 mi (101 by 66 km), are found on privately, State-, and federally owned land and contain an estimated 53 known individuals (HHP 1991r1 to 1991r12; J. Lau and W. Wagner, pers. comms., 1992). This species typically grows in koa- and 'ohi'a- or lama-dominated Lowland Dry Forests and Montane Dry or Mesic Forests, often on a substrate, at elevations between 590 and 6,000 ft (180 and 1,830 m) (Gagne and Cuddihy 1990; HHP 1991r1, 1991r2, 1991r5, 1991r7, 1991r12, HPCC 1991h; Symon 1990). Associated species include 'iliahi, *Caesalpinia kavaiensis* (uhiuhi), and *Erythrina sandwicensis* (wiliwili) (HHP 1991r1, 1991r3, 1991r4, 1991r12; HPCC 1991h; W. Wagner, pers. comm., 1992). The major threats to *Nothocestrum breviflorum* are competition from alien species such as Christmas berry, fountain grass, lantana, and *Leucaena leucocephala* (koa haole); browsing by cattle; fire; and stochastic extinction and/or reduced reproductive vigor due to the small number of existing individuals (HHP 1991r4, 1991r6, 1991r12; Lamb 1981; W. Wagner, pers. comm., 1992).

Ochrosia kilaueaensis was first collected by Forbes in 1915 and was named by St. John in 1978. The specific epithet refers to Kilauea, the type locality of the plant on the island of Hawaii. Based on a specimen collected in 1909 by Rock, St. John (1978) named *O. konaensis*. In the current treatment of the genus (Wagner *et al.* 1990), *O. konaensis* is considered synonymous with *O. kilaueaensis*.

Ochrosia kilaueaensis of the dogbane family (Apocynaceae) is a hairless tree 49 to 59 ft (15 to 18 m) tall with milky sap. The lance- or ellipse-shaped toothless leaves are arranged three or four per node, are 2.4 to 7.5 in (6 to 19 cm) long and 0.9 to 2.6 in (2.2 to 6.5 cm) wide, and have veins arising at nearly right angles to the midrib. Open clusters of numerous flowers have main stalks 1.8 to 2.5 in (4.5 to 6.3 cm) long, secondary branches 0.4 to 1 in (1.1 to 2.5 cm) long, and individual flower stalks 0.2 to 0.3 in (5 to 7 mm) long. Each flower has a five-lobed calyx about 0.4 in (10 to 11 mm) long and a trumpet-shaped greenish-white corolla with a tube 0.3 to 0.4 in (7 to 11 mm) long and lobes 0.5 to 0.6 in (12 to 15 mm) long. The fruit is a drupe (a fruit with a firm outer layer, a fleshy inner layer, and a stony inner layer surrounding a single seed) thought to be yellowish brown at maturity, 1.8 to 1.9 in (4.5 to 4.9 cm) long, and 0.9 to 1.1 in (2.4 to 2.9 cm) wide. This species is distinguished from other Hawaiian species of the genus by the greater height of mature trees, the open flower clusters, the longer flower stalks, and the larger calyx and lobes of the corolla (Wagner *et al.* 1990).

Historically, *Ochrosia kilaueaensis* has been collected on the northern slope of Hualalai and on the eastern slope of Mauna Loa. There is one known extant population located at Puu Waawaa on State-owned land and consisting of an unknown number of individuals (HHP 1991s1, 1991s2). This species typically grows in koa- and 'ohi'a- or lama-dominated Montane Mesic Forests at elevations between 2,200 and 4,000 ft (670 and 1,220 m) (Gagne and Cuddihy 1990; HHP 1991s1, 1991s2; Wagner *et al.* 1990). Associated species include 'aiea, *Colubrina oppositifolia* (kauila), *Gardenia brighamii* (nanu), and *Psychotria hawaiiensis* (kopiko) (HHP 1991s1). The major threats to *Ochrosia kilaueaensis* are competition from alien species such as fountain grass, browsing by feral goats, fire, and stochastic extinction and/or reduced reproductive

vigor due to the single existing known population (Bruegmann 1990, CPC 1990b).

Gray (1862) named *Plantago pachyphylla* var. *hawaiiensis* and *P. pachyphylla* var. *hawaiiensis* subvar. *gracilis* based on specimens collected on the island of Hawaii during the United States Exploring Expedition of 1840 and 1841 and by Remy in the 1850s, respectively. Leveille (1911) published *P. gaudichaudiana* based on another specimen from the island of Hawaii. In 1923, Pilger raised the taxon to specific rank, resulting in *P. hawaiensis*, and also published a new variety, var. *laxa* (Pilger 1937). The specific epithet refers to the island where the plant grows. In the current treatment of the genus, only *P. hawaiensis* is accepted (Wagner *et al.* 1990).

Plantago hawaiensis of the plantain family (Plantaginaceae), a perennial herb which grows from a stout short stem, has thick, leathery, narrowly oval or oblong leaves located at the base of the plant which measure 3 to 8.7 in (7.5 to 22 cm) long and usually 0.6 to 1.3 in (1.5 to 3.2 cm) wide. The flowering stalk is 7.9 to 35 in (20 to 90 cm) long and is topped by a spike usually 5.9 to 9 in (15 to 23 cm) long. Each upward pointing flower, subtended by a single bract 0.08 to 0.1 in (2.1 to 2.6 mm) long, has a four-lobed calyx 0.06 to 0.09 in (1.6 to 2.2 mm) long and a trumpet-shaped corolla about 0.04 in (1 mm) long. The capsule, 0.1 to 0.2 in (2.6 to 4 mm) long and projecting from the calyx, opens to release four to six dull black seeds about 0.04 in (1 mm) long and winged on one end. This species is distinguished from other endemic and naturalized species of the genus in Hawaii by its perennial herbaceous habit; its thick leathery leaves; its upward pointing flowers; and its capsules which project from the calyx (Wagner *et al.* 1990).

Historically, *Plantago hawaiensis* was found only on the island of Hawaii on the southern slopes of Mauna Kea; the northeastern, southeastern, and southern slopes of Mauna Loa; and the western slope of Hualalai. Today, the species is known to occur on the Humuula Saddle, in the Upper Waiakea Forest Reserve, and near the Keapohina Upland on privately and State-owned land. The four extant populations extend over a distance of approximately 14 by 4 mi. (23 by 6 km) and contain an unknown number of individuals (HHP 1991t1 to 1991t6). This species typically grows in boggy conditions in Montane Wet Herblands or in Montane Dry Shrublands dominated by koa or 'ohi'a trees of short stature, or sometimes in lava cracks, at elevations between 5,900 and 6,400 ft (1,800 and 1,950 m) (HHP 1991t1, 1991t2, 1991t4, 1991t6; Wagner *et al.* 1990). The major threat to *Plantago hawaiensis* is stochastic extinction and/or reduced reproductive vigor due to the small number of existing populations.

Portulaca sclerocarpa was first collected during the United States Exploring Expedition of 1840 and 1841 and was named by Gray (1854). The specific epithet refers to the hardened capsule.

Portulaca sclerocarpa of the purslane family (Portulacaceae), a perennial herb with a fleshy tuberous taproot which becomes woody, has stems up to about 7.9 in. (20 cm) long. The stalkless, succulent, grayish-green leaves are almost circular in cross-section, 0.3 to 0.8 in. (8 to 21 mm) long, and about 0.06 to 0.1 in. (1.5 to 2.5 mm) wide. Dense tufts of hairs are located in each leaf axil and underneath the tight clusters of three to six stalkless flowers grouped at the ends of the stems. Sepals are about 0.2 in. (5 mm) long and have membranous edges. Petals are white, pink, or pink with a white base, about 0.4 in. (10 mm) long, and surround about 30 stamens and an 8-branched style. The hardened capsules are about 0.2 in. (4 to 4.5 mm) long, have walls 0.01 to 0.02 in. (0.18 to 0.5 mm) thick, open very late or not at all, and contain glossy, dark reddish-brown seeds about 0.02 in. (0.4 to 0.6 mm) long. This species differs from other native and naturalized species of the genus in Hawaii by its woody taproot, its narrow leaves, and the colors of its petals and seeds. Its closest relative, *Portulaca villosa*, differs mainly in its thinner-walled, opening capsule (Wagner *et al.* 1990).

Historically, *Portulaca sclerocarpa* was found on an islet off the south coast of the island of Lanai and on the island of Hawaii in the Kohala Mountains, on the northern slope of Hualalai, the northwestern slope of Mauna Loa, and near Kilauea Crater. There is 1 extant population on Poopoo Islet off the coast of Lanai which contains about 10 plants (R. Hobdy, pers. comm., 1992). On Hawaii, 11 extant populations extend over a distance of about 54 by 32 mi (87 by 51 km) and are located on 3 cinder cones in the Nohonaohae area; at PTA, including inside the Multi-Purpose Range Complex (MPRC); at Puu Anahulu; and near Puu Keanui and Puu Lehua on private, State, and Federally owned land. The 11 populations on the island of Hawaii contain a total of approximately 72 to 122 individuals (Cuddihy *et al.* 1983; HHP 1991u1 to 1991u12; R. Shaw, pers. comm., 1992). This species typically grows in Montane Dry Shrublands, often on bare cylinder and even near steam vents, at elevations between 3,380 and 5,340 ft (1,030 and 1,630 m) Gagne and Cuddihy 1990, Wagner *et al.* 1990). Associated species include mamane and 'ohi'a (HHP 1991u1, 1991u8 to 1991u10, 1991u12; HPCC 1991i). The major threats to *Portulaca sclerocarpa* are competition from alien grasses such as fountain grass and *Andropogon virginicus* (broomsedge); grazing, browsing, trampling, and habitat disturbance by feral goats, pigs, and sheep; habitat disturbance and damage to plants as a result of military exercises; and fire (HHP 1991u2, 1991u9; HPCC 1991i; R. Shaw, pers. comm., 1992).

Based on collections by Rock on the island of Hawaii, Beccari named *Pritchardia affinis* and three varieties: Var. *halophila* (misspelled as "holaphila"), var. *rhopalocarpa*, and var. *gracilis* (Beccari and Rock 1921). In the current treatment of the genus (Read and Hodel 1990), no subsequent taxa are recognized.

Pritchardia affinis of the palm family (Arecaceae) is a fan-leaved tree 33 to 82 ft (10 to 25 m) tall with pale or pinkish soft wool covering the underside of the petiole and extending onto the leaf blade. The wedge-shaped leaf has a green and smooth upper surface and a pale green lower surface with scattered yellowish scales. The branched, hairless flower clusters are located among the leaves. Each flower comprises a cup-shaped, three-lobed calyx; three petals; six stamens; and a three-lobed stigma. The spherical fruit is about 0.9 in (2.3 cm) in diameter. This species is distinguished from other species of *Pritchardia* by the long, tangled, woolly hairs on the underside of the petiole and the base of the lower leaf blade; the stout hairless flower clusters which do not extend beyond the wedge-shaped leaves; and the smaller spherical fruit (Read and Hodel 1990).

Historically, *Pritchardia affinis* was found only on the island of Hawaii in the Kohala Mountains and along the western and southeastern coasts. Today, scattered individuals of the species can be found throughout much of the historically known coastal range at Kiholo, at Kukio, near Palanai Road, on Alii Drive in Kailua, in Captain Cook, at Hookena, at Milolii, and at Punaluu. Most plants grow within areas of human habitation or development, and the trees may have been cultivated by Hawaiians or others rather than having occurred in these areas naturally. There are an estimated 50 to 65 known individuals at 8 or more localities which extend along about 110 mi (180 km) along the coast on privately and State-owned land (HHP

1991v1 to 1991v6; Norman Bezona, Hawaii Cooperative Extension Service, Brien Meilleur, Amy Greenwell Ethnobotanical Garden, and P. Weissich, pers. comms., 1992). This species typically grows in Coastal Mesic Forests at coastal sites or in gulches further inland at elevations between sea level and 2,000 ft (0 and 610 m), possibly associated with brackish water (HHP 1991v2; Read and Hodel 1990; C. Corn, pers. comm., 1992). Native associated species of this loulu are unknown, since all trees are found in cultivated zones, which have long been cleared of their native cover (B. Meilleur, pers. comm., 1992). The major threats to *Pritchardia affinis* are predation on seeds by roof rats, development of land where individuals grow, and stochastic extinction and/or reduced reproductive vigor due to the small number of existing individuals. In the past, the species' natural habitat was cleared for agriculture and housing, and feral pigs destroyed seedlings of the species, preventing regeneration (Beccari and Rock 1921; Hull 1980; C. Corn, pers. comm., 1992).

Gray (1854) mentioned an unnamed variety of *Silene struthioloides*, in reference to a specimen collected on the island of Hawaii during the United States Exploring Expedition of 1840 and 1841. Sherff named this taxon *S. struthioloides* var. *gracilis* in 1946 and later elevated it to specific rank, resulting in *S. hawaiiensis* (1949). He chose the specific epithet to refer to the island where the plant is found.

Silene hawaiiensis of the pink family (Caryophyllaceae), a sprawling shrub with slanting or climbing stems 6 to 16 in (15 to 40 cm) long originating from an enlarged root, is covered with short, often sticky hairs. The stalkless narrow leaves are 0.2 to 0.6 in (6 to 15 mm) long and 0.02 to 0.03 in (0.5 to 0.8 mm) wide. Flowers are arranged in elongate clusters. Each flower has a stalk 0.1 to 0.2 in (3 to 6 mm) long; a five-toothed purple or purple-tinged calyx 0.4 to 0.6 in (11 to 14 mm) long; and five petals, greenish white above and maroon below, with a stalk-like base and a flat, two-lobed, expanded portion about 0.2 in (4.5 to 5.5 mm) long. The fruit is a capsule about 0.3 in (6.5 to 8 mm) long which releases pale brown seeds 0.02 to 0.03 in (0.4 to 0.7 mm) long. This species differs from others of *Silene* in Hawaii by its growth habit; its covering of short, often sticky hairs; the shape of its leaves; the arrangement of its flower clusters; and the color of its petals (Wagner *et al.* 1990).

Historically, *Silene hawaiiensis* was found only on the island of Hawaii from the western slope of Mauna Kea; the summit of Hualalai; Humuula Saddle; the northern, western, and northwestern slopes of Mauna Loa; and near Kilauea Crater. Today, populations are found in Hamakua District; on Humuula Saddle; at PTA, including inside MPRC; north of Puu Keanui; and in HVNP on privately, State-, and federally owned land. The 17 populations extend over a distance of approximately 12 by 7 mi (19 by 11 km) and contain a total of between about 2,600 and 2,700 individuals (HHP 1991w1 to 1991w10; HPCC 1991j; R. Shaw, pers. comm., 1992). This species typically grows in Montane or Subalpine Dry Shrublands in decomposed lava and ash at elevations between 3,000 and 4,300 ft (900 and 1,300 m) and sometimes up to 8,353 ft (2,546 m) (Wagner *et al.* 1990). Associated species include *Dodonaea viscosa* ('a'ali'i), *Styphelia tameiameiae* (pukiawe), and *Vaccinium reticulatum* ('ohelo) (HHP 1991w6; HPCC 1991j; R. Shaw, pers. comm., 1992). The major threats to *Silene hawaiiensis* are competition with alien plant species, particularly fountain grass; grazing, browsing, and trampling by feral goats, pigs, and sheep; habitat disturbance and damage to plants as a result of military exercises; fire; and volcanic activity (HPCC 1991j; R. Shaw, pers. comm., 1992).

Gray (1861a) named a plant collected on the island of Hawaii during the United States Exploring Expedition of 1840 and 1841 *Vittadenia arenaria*. Hillebrand (1888) transferred the species to the genus *Tetramolopium* and named a second variety, var. *dentatum*. In the current treatment of the genus (Lowrey 1986, 1990), two subspecies, ssp. *arenarium* and ssp. *laxum*, are recognized. Variety *confertum*, described by Sherff in 1934, is recognized (Lowrey 1986, 1990) as a variety of spp. *arenarium*. Because of a recently recognized typification problem, ssp. *laxum* actually should be referred to as spp. *arenarium*, leaving what was called ssp. *arenarium* without a published name (Laven *et al.* 1991).

Tetramolopium arenarium of the aster family (Asteraceae), an erect tufted shrub 2.6 to 4.3 ft (0.8 to 1.3 m) tall, is covered with tiny glands and straight hairs. The alternate, toothless or shallowly toothed leaves are more or less lanced-shaped, 0.6 to 1.5 in (15 to 37 mm) long, and 0.1 to 0.4 in (3 to 9 mm) wide. Five to 11 heads (dense flower clusters) are grouped at the end of each stem. Each head comprises a bell-shaped structure of 20 to 34 bracts 0.1 to 0.2 in (2.5 to 5 mm) high and 0.2 to 0.4 in (4 to 9 mm) in diameter beneath the flowers; a single series of 22 to 45 white, male ray florets 0.05 to 0.09 in (1.3 to 2.2 mm) long; and 4 to 9 bisexual disk florets with maroon petals 0.12 to 0.17 in (3.1 to 4.4 mm) long. Fruits are compressed achenes 0.06 to 0.1 in (1.5 to 3 mm) long and 0.02 to 0.03 in (0.5 to 0.8 mm) wide. This species is distinguished from others of the genus by its erect habit; the presence and types of glands and hairs on the plant; the fewer heads per flower cluster; the larger, male ray florets; the fewer, bisexual, maroon-petalled disk florets; and the wider achenes (Lowrey 1990).

Historically, *Tetramolopium arenarium* was found on the island of Maui on the western slope of Halakeala and on the island of Hawaii from the Kohala Mountains, the northwestern slopes of Mauna Kea and Mauna Loa, and the slopes of Hualalai. Only one population is known today, and it occurs on Hawaii in Kipuka Kalawamauna at PTA on federally managed land. At last count, there were 134 plants in a 660 by 200 ft (200 by 60 m) area (HHP 1991x1 to 1991x4, 1991y; HPCC 1990a; Laven *et al.* 1991; R. Shaw, pers. comm., 1992). This species typically grows in open 'a'ali'i-dominated Lowland or Montane Dry Forest at elevations between 2,600 and 4,900 ft (800 and 1,500 m) (Lowrey 1990). Associated species include 'a'ali'i, pukiawe, *Chamaesyce olowaluana* ('akoko), and *Dubautia linearis* (na'ena'e) (HPCC 1990a). The major threats to *Tetramolopium arenarium* are competition from alien plant species, particularly fountain grass; grazing, browsing, trampling, and habitat disturbance by feral goats, pigs, and sheep; habitat disturbance and damage to plants as a result of military exercises; fire; and stochastic extinction and/or reduced reproductive vigor due to the single existing population (Douglas *et al.* 1989, HPCC 1990a, Herbst and Fay 1979).

Hillebrand (1888) described *Zanthoxylum hawaiiense* based on a specimen collected on the island of Hawaii and also indicated an unnamed variety for a specimen collected on Lanai. Other names published for portions of this taxon include: *Z. bluettianum* (Rock 1913), *Z. hawaiiense* var. *citriodora* (Rock 1913), *Z. hawaiiense* var. *velutinosum* (Rock 1913), and *Z. hawaiiense* var. *subacutum* (St. John 1976). Some authors placed Hawaiian species in the genus *Fagara*, resulting in *F. hawaiiensis* (Engler 1896) and *F. bluettiana* (Engler 1931). Sherff (1958) named *F. hawaiiensis* var. *citriodora*, *F. hawaiiensis* var. *subacutata*, and *F. hawaiiensis* var. *velutinosa*, all of which are considered within the range of

variation of *Z. hawaiiense* in the current treatment of the Hawaiian species (Stone *et al.* 1990).

Zanthoxylum hawaiiense of the rue family (Rutaceae), a thornless tree usually 10 to 26 ft (3 to 8 m) tall with a trunk up to 10 in (25 cm) in diameter, has alternate leaves comprising three leathery, triangular-oval or lance-shaped, gland-dotted, lemon-scented, toothed leaflets usually 1.3 to 3.9 in (3.4 to 10 cm) long and 0.6 to 2 in (1.5 to 5 cm) wide. The stalk of each of the two side leaflets has one joint, and the stalk of the terminal leaflet has two joints. Flowers are usually either male or female, and usually only one sex is found on a single tree. Clusters of 15 to 20 flowers 1.6 to 3.1 in (4 to 8 cm) long have a main flower stalk 0.8 to 2 in (20 to 50 mm) long and individual flower stalks 0.08 to 0.2 in (2 to 4 mm) long. Each flower has four narrowly triangular sepals about 0.04 in (1 mm) long and four hairless petals (possibly absent in male flowers) of an unknown color. The fruit is a sickle-shaped follicle (dry fruit that opens along one side) 0.3 to 0.4 in (8 to 10 mm) long, containing one black seed about 0.3 in (7 to 8 mm) in diameter. This species is distinguished from other Hawaiian species of the genus by its leaves, which are always made up of three leaflets of similar size; the presence of only one joint on some of the leaflet stalks; and the shorter follicle with a rounded tip (Stone *et al.* 1990).

Historically, *Zanthoxylum hawaiiense* was known to occur in the central portion of the island of Kauai; on East Molokai; in the central part of the island of Lanai; on East Maui on the southwestern and southern slopes of Haleakala; and on the island of Hawaii in the Kohala Mountains, on the northern slope of Hualalai, and on the northwestern slope of Mauna Loa. There is now one living individual known on Kauai in Kawaiiki Valley on State-owned land. On Molokai, three extant populations of the species occur on privately and State-owned and federally managed land in Kalaupapa National Historical Park (NHP), in Pelekunu Valley, and near Puu Kolekole. The Molokai populations extend over a distance of about 3 by 2 mi (5 by 3 km). Although the number of plants at one of the sites is uncertain, it is estimated that the 3 populations contain 5 plants. On Lanai, one population with an unknown number of individuals has been reported on privately owned property in Kaiholena Gulch. On East Maui, extant populations of *Z. hawaiiense* have been found in Kahikinui, above Lualailua, above Kanaio, and in Auwahi. These 4 populations extend over a distance of approximately 5 by 3 mi (8 by 5 km) and contain a total of fewer than 10 plants. On the island of Hawaii, individuals are found at Puu Waawaa and at PTA on State-owned and federally managed land. These 2 extant populations are located about 13 mi (21 km) apart and contain a total of about 50 plants. In summary, *Zanthoxylum hawaiiense* is currently located on 5 islands and consists of 11 populations and about 66 individuals (HHP 1991z1 to 1991z16; R. Shaw, pers. comm., 1991).

Zanthoxylum hawaiiense typically grows in 'ohi'a-dominated Lowland Dry or Mesic Forests, and Montane Dry Forests, often on aa lava, at elevations between 1,800 and 5,710 ft (550 and 1,740 m) (Gagne and Cuddihy 1990), Stone *et al.* 1990). Associated species include *Antidesma platyphyllum* (hame) on Kauai, *Pleomele auwahiensis* (hala pepe) on Molokai, a'ia'i on Maui, and mamane and naio on the island of Hawaii (HHP 1991z1, 1991z5, 1991z9, 1991z11; HPCC 1990b; R. Shaw, pers. comm., 1992). A threat to *Z. hawaiiense* on Kauai is competition from alien plant species such as lantana and *Melia azedarach* (Chinaberry) (HHP 1991z11). On Molokai, grazing, browsing, trampling, and habitat disturbance by feral goats is a threat (HHP 1991z5). On Maui, competition with Kikuyu grass, which forms a continuous mat in many areas, and grazing, browsing, trampling, and habitat disturbance by cattle and goats are threats (A. Medeiros, pers. comm., 1992). The major threats to the species on the island of Hawaii are competition from alien plant species such as fountain grass; grazing, browsing, trampling, and habitat disturbance by feral goats and sheep; habitat disturbance and damage to plants as a result of military exercises; and fire (CPC 1990b, HHP 1991z10, HPCC 1990b). In addition, the species is threatened by stochastic extinction and/or reduced reproductive vigor due to the small number of existing individuals.

Previous Federal Action

Federal action on these plants began as a result of section 12 of the Act, which directed the Secretary of the Smithsonian Institution to prepare a report on plants considered to be endangered, threatened, or extinct in the United States. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. In that document, *Clermontia lindseyana, Clermontia peleana, Colubrina oppositifolia, Cyanea hamatiflora* ssp. *carlsonii* (as *C. carlsonii*), *Cyanea shipmanii, Hesperocnide sandwicensis, Ischaemum byrone, Nothocestrum breviflorum* (as *N. breviflorum* var. *breviflorum*), *Portulaca sclerocarpa*, and *Zanthoxylum hawaiiense* (as *Z. hawaiiense* var. *citriodora*) were considered to be endangered. *Cyrtandra giffardii, Silene hawaiiensis* (as *S. hawaiiensis* var. *hawaiiensis*), and *Zanthoxylum hawaiiense* (as *Z. hawaiiense* var. *hawaiiense* and *Z. hawaiiense* var. *velutinosum*) were considered to be threatened. *Clermontia pyrularia, Isodendrion pyrifolium, Nothocestrum breviflorum* (as *N. breviflorum* var. *longipes*), and *Tetramolopium arenarium* (as *T. arenarium* var. *arenarium, T. arenarium* var. *confertum*, and *T. arenarium* var. *dentatum*) were considered to be extinct. On July 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, 10 of the taxa (including synonymous taxa) that had been proposed as endangered in the June 16, 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. *Clermontia lindseyana, Clermontia pyrularia, Colubrina oppositifolia, Cyanea shipmanii, Hesperocnide sandwicensis, Ischaemum byrone, Nothocestrum breviflorum, Portulaca sclerocarpa,* and *Zanthoxylum hawaiiense,* which were proposed as endangered in the June 16, 1976, proposed rule, were considered Category 1 candidates on all three notices of review; *Cyanea hamatiflora* ssp. *carlsonii* was considered a Category 1 taxon as *Cyanea carlsonii* in the 1980 and 1985 notices and as *Cyanea hamatiflora* ssp. *carlsonii* in the 1990 notice. *Cyanea stictophylla* and *Silene hawaiiensis* were considered Category 1 species in all three notices. In the 1980 and 1985 notices, *Isodendrion pyrifolium* and *Tetramolopium arenarium* were considered Category 1* species. In the 1990 notice, these two species were accorded Category 3A status, but because new information regarding their existence has become available, they are proposed herein for listing. Category 1* taxa are those which are possibly extinct, and Category 3A taxa are those for which the Service has persuasive evidence of extinction.

Cyrtandra giffardii appeared as a Category 2 species and *Clermontia peleana* as a Category 3C species in the 1980 and 1985 notices. *Ochrosia Kilaueaensis* first appeared as a Category 2 species in the 1985 notice. 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. Category 3C taxa are those which are more abundant than previously believed. Because new information provided support for listing, the above three species were conferred Category 1 status in the 1990 notice. The 1990 notice recognized *Cyanea copelandii* spp. *copelandii, Cyrtandra tintinnabula, Mariscus fauriei, Plantago hawaiensis,* and *Pritchardia affinis* as Category 1 taxa for the first time.

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, 1990, and 1991. Publication of the present proposed rule constitutes the final 1-year finding for these taxa.

Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act (16 U.S.C. 1533) and regulations (50 CFR part 424) promulgated to implement the Act set forth the procedures for adding species to the Federal Lists. A species may be determined to be an endangered species due to one or more of the five factors described in section 4(a)(1). The threats facing these 22 taxa are summarized in Table 1.

TABLE 1.—SUMMARY OF THREATS

Species	Alien mammals						Disease/ insects	Alien plants	Fire	Natural disasters	Human impacts	Military	Limited No.*
	Cattle	Deer	Goats	Pigs	Rats	Sheep							
Clermontia lindseyana.	X			X	P			X					
Clermontia peleana				X	X					X	X		X1
Clermontia pyrularia.					P			X			P		X1, 2
Colubrina oppositifolia.				X			X	X	X		P	X	
Cyanea copelandii ssp. *copelandii.*					P						P		X1, 2
Cyanea hamatiflora ssp. *carlsonii.*	X				P			X					X2, 3
Cyanea shipmanii .					P								X2, 3
Cyanea stictophylla	X				P								X2, 3
Cyrtandra giffardii .				X							P		X2, 3
Cyrtandra tintinnabula.				X									X2, 3
Hesperocnide sandwicensis.			X	X		X		X	X		P	X	
Ischaemum byrone		P	P					X		X	P		
Isodendrion pyrifolium.								X	X		P		X1, 2
Mariscus fauriei		X	X					X					X2, 3
Nothocestrum breviflorum.	X							X	X		P		X3
Ochrosia kilaueaensis.			X		P			X	X		P		X1, 2
Plantago hawaiensis.													X1, 2
Portulaca sclerocarpa.			X	X		X		X	X		P	X	
Pritchardia affinis ..					X		P				X		X3
Silene hawaiiensis			X	X		X		X	X	X	P	X	
Tetramolopium arenarium.			X	X		X		X	X		P	X	X2
Zanthoxylum hawaiiense.	X	P	X			X		X	X		P	X	X3

KEY
X—Immediate and significant threat.
P—Potential threat.
*—No more than 100 known individuals and/or no more than 5 known populations.

1—No more than 10 known individuals.
2—No more than 5 known populations.
3—No more than 100 known individuals.
4—Extinct in the wild.

These factors and their application to *Clermontia lindseyana* Rock ('oha wai), *Clermontia peleana* Rock ('oha wai), *Clermontia pyrularia* Hillebr. ('oha wai), *Colubrina oppositifolia* Brongn. ex H. Mann (kauila), *Cyanea copelandii* Rock ssp. *copelandii* (haha), *Cyanea hamatiflora* ssp. *carlsonii* (Rock) - Lammers (haha), *Cyanea shipmanii* Rock (haha), *Cyanea stictophylla* Rock (haha), *Cyrtandra giffardii* Rock (ha'iwale), *Cyrtandra tintinnabula* Rock (ha'iwale), *Hesperocnide sandwicensis* (Wedd.) Wedd. (no common name (NCN)), *Ischaemum byrone* (Trin.) Hitch. (Hilo ischaemum), *Isodendrion pyrifolium* A. Gray (wahine noho kula), *Mariscus fauriei* (Kukenth.) T. Koyama (NCN), *Nothocestrum breviflorum* A. Gray ('aiea), *Ochrosia kilaueaensis* St. John (holei), *Plantago hawaiensis* (A. Gray) Pilg. (laukahi kuahiwi), *Portulaca sclerocarpa* A Gray (po'e), *Pritchardia affinis* Becc. (loulu), *Silene hawaiiensis* Sherff (NCN), *Tetramolopium arenarium* (A. Gray) Hillebr. (NCN), and *Zanthoxylum hawaiiense* Hillebr. (a'e) are as follows:

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

The habitat of the plants included in this proposed rule has undergone extreme alteration because of past and present land management practices, including deliberate alien animal and plant introductions; agricultural, commercial, and urban development; and military and recreational use. Natural disturbances such as flooding, landslides, and volcanic activity also destroy habitat and can have a significant effect on small populations of plants. Competition with alien plants as well as destruction of plants and modification of habitat by introduced animals are the primary threats facing 19 of the 22 taxa being proposed (See Table 1.).

Beginning with Captain James Cook in 1792, early European explorers introduced livestock, which became feral, increased in number and range, and caused significant changes to the natural environment of Hawaii. The 1848 provision for land sales to individuals allowed large-scale agricultural and ranching ventures to begin. So much land was cleared for these enterprises that climatic conditions began to change, and the amount and distribution of rainfall were altered (Wenkam 1969). Plantation owners supported reforestation programs which resulted in many alien trees being introduced in the hope that the watershed could be conserved.

Past and present activities of introduced alien mammals are the primary factor in altering and degrading vegetation and habitats on the island of Hawaii as well as on Kauai, Oahu, Molokai, and Maui, where some populations of the proposed species occur. Feral ungulates trample and eat native vegetation and disturb and open areas. This cause erosion and allows the entry of alien plant species (Cuddihy and Stone 1990, Wagner *et al.* 1990). Seventeen taxa in this proposal are directly threatened by habitat degradation resulting from introduced ungulates: 5 taxa are threatened by cattle, 1 taxon by deer, 7 taxa by goats, 9 by pigs, and 5 by sheep.

Axis deer (*Axis axis*), native to Sri Lanka and India, were first introduced to the Hawaiian Islands in 1868 as a game animal on Molokai, later to Oahu and Lanai, and finally to East Maui in 1960. Hunting of axis deer is allowed only on Molokai and Lanai during two months of the year (Hawaii DLNR 1985, Tomich 1986). The animal constitutes a threat to *Mariscus fauriei* on Molokai and a potential threat to *Ischaemum byrone* and *Zanthoxylum hawaiiense* on Molokai and Maui (HHP 1991z5; HPCC 1990b; Medeiros *et al.* 1986; R. Hobdy, pers. comm., 1992).

Cattle (*Bos taurus*), the wild progenitor of which was native to Europe, northern Africa, and southwestern Asia, were introduced to the Hawaiian Islands in 1793. Large feral herds developed as a result of restrictions on killing cattle decreed by King Kamehameha I. While small cattle ranches were developed on Kauai, Oahu, and West Maui, very large ranches of tens of thousands of acres were created on East Maui and Hawaii. Much of the land used in these private enterprises was leased from the State or was privately owned and considered Forest Reserve and/or Conservation District land. On Kauai, both sides of Waimea Canyon were supporting large cattle ranching operations by the 1870s (Ryan and Chang 1985). Feral cattle roamed Oahu, but most were removed by the early 1960s; today only a few can be found in the northwestern part of the island (J. Lau, pers. comm., 1990). Feral cattle were formerly found on Molokai and Maui and damaged the forests there. Feral cattle can presently be found on the island of Hawaii, and ranching is still a major commercial activity there. Hunting of feral cattle is no longer allowed in Hawaii (Hawaii DLNR 1985). Cattle eat native vegetation, trample roots and seedlings, cause erosion, create disturbed areas into which alien plants invade, and spread seeds of alien plants in their feces and on their bodies. The forest in areas grazed by cattle becomes degraded to grassland pasture, and plant cover is reduced for many years following removal of cattle from an area. Several alien grasses and legumes purposely introduced for cattle forage have become noxious weeds (Cuddihy and Stone 1990, Tomich 1986).

The habitats of many of the plants being proposed were degraded in the past by feral cattle, and this has had effects which still persist. Some taxa in this proposed rule are still being directly affected by cattle. These include: *Clermontia lindseyana, Cyanea hamatiflora* ssp. *carlsonii, Cyanea stictophylla, Nothocestrum breviflorum,* and *Zanthoxylum hawaiiense* (HHP 1991a1, 1991m, 1991n1, 1991r4, 1991r5; HPCC 1990b, 1991a, 1991h; F. Duvall, A. Medeiros, and S. Montgomery, pers. comms., 1992).

Goats (*Capra hircus*), a species originally native to the Middle East and India, were successfully introduced to the Hawaiian Islands in 1792, and currently there are populations on Kauai, Oahu, Molokai, Maui, and Hawaii. On Kauai, feral goats have been present in drier, more rugged areas since 1820; they still occur in Waimea Canyon. Goats have been on Oahu since about 1820, and they currently occur in the northern Waianae Mountains. On Molokai, goats degrade dry forests at low elevations. On Maui, goats have been widespread for 100 to 150 years and are common throughout the south slope of Haleakala (Medeiros *et al.* 1986). On Hawaii, goats damage low-elevation dry forest, montane parkland, subalpine woodlands, and alpine grasslands. Goats are managed in Hawaii as a game animal, but many herds populate inaccessible areas where hunting has little effect on their numbers. Goat hunting is allowed year-round or during certain months, depending on the area (Hawaii DLNR n.d., 1985). Goats browse on introduced grasses and native plants, especially in drier and more open ecosystems. They also trample roots and seedlings, cause erosion, and promote the invasion of alien plants. They are able to forage in extremely rugged terrain and have a high reproductive capacity (Cuddihy and Stone 1990, Culliney 1988, Tomich 1986). *Hesperocnide sandwicensis, Mariscus fauriei, Ochrosia kilaueaensis,*

Portulaca sclerocarpa, Silene hawaiiensis, Tetramolopium arenarium, and *Zanthoxylum hawaiiense* are currently threatened by goats (Bruegmann 1990; CPC 1990b; HHP 1991u5, 1991z5; HPCC 1990b; R. Hobdy, A. Medeiros, and R. Shaw, pers. comms., 1992), and *Ischaemum byrone* is potentially threatened by the animal (HHP 1991o11; R. Hobdy, pers. comm., 1992).

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 PTA, 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 at least two previously listed endangered species as well as the following proposed plant species: *Hesperocnide sandwicensis, Portulaca sclerocarpa, Silene hawaiiensis, Tetramolopium arenarium,* and *Zanthoxylum hawaiiense* (Cuddihy and Stone 1990; HHP 1991u4, HPCC 1990a, 1990b; Shaw *et al.* 1990; Stone 1985; K. Nagata and R. Shaw, pers. comms., 1992).

Pigs (*Sus scrofa*) are originally native to Europe, northern Africa, Asia Minor, and Asia. European pigs, introduced to Hawaii by Captain James Cook in 1778, became feral and invaded forested areas, especially wet and mesic forests and dry areas at high elevations. They are currently present on Kauai, Oahu, Molokai, Maui, and Hawaii and inhabit rain forests and grasslands. Pig hunting is allowed on all islands either year-round or during certain months, depending on the area (Hawaii DLNR n.d., 1985). While rooting in the ground in search of the invertebrates and plant material they eat, feral pigs disturb and destroy vegetative cover, trample plants and seedlings, and threaten forest regeneration by damaging seeds and seedlings. They disturb soil substrates and cause erosion, especially on slopes. Alien plant seeds are dispersed in their hooves and coats as well as through their digestive tracts, and the disturbed soil is fertilized by their feces, helping these plants to establish (Cuddihy and Stone 1990, Medeiros *et al.* 1986, Smith 1985, Stone 1985, Tomich 1986, Wagner *et al.* 1990). Feral pigs pose an immediate threat to one or more population of the following proposed taxa: *Clermontia lindseyana, Clermontia peleana, Colubrina oppositifolia, Cyrtandra giffardii, Cyrtandra tintinnabula, Hesperocnide sandwicensis, Portulaca sclerocarpa, Silene hawaiiensis,* and *Tetramolopium arenarium* (Bruegmann 1990; CPC 1990b; HPCC 1990a, 1991a, 1991d1, 1991d2; J. Lau, A. Medeiros, John Obata, Hawaii Plant Conservation Center, and W. Wagner, pers. comms., 1992).

One or more species of 12 introduced plants threaten 13 of the proposed taxa. The original native flora of Hawaii consisted of about 1,000 species, 89 percent of which were endemic. Of the total native and naturalized Hawaiian flora of 1,817 species, 47 percent were introduced from other parts of the world and nearly 100 species have become pests (Smith 1985, Wagner *et al.* 1990). Naturalized, introduced species degrade the Hawaiian landscape and compete with native plants for space, light, water, and nutrients (Cuddihy and Stone 1990). Some of these species were brought to Hawaii by various groups of people, including the Polynesian immigrants, for food or cultural reasons. Plantation owners, alarmed at the reduction of water resources for their crops caused by the destruction of native forest cover by grazing feral animals, supported the introduction of alien tree species for reforestation. Ranchers intentionally introduced pasture grasses and other species for agriculture, and sometimes they inadvertently introduced weed seeds as well. Other plants were brought to Hawaii for their potential horticultural value (Cuddihy and Stone 1990, Wenkam 1969).

Lantana camara (lantana), brought to Hawaii as an ornamental plant, is an aggressive, thicket-forming shrub which can now be found on all of the main islands in mesic forests, dry shrublands, and other dry, disturbed habitats (Wagner *et al.* 1990). One or more populations of each of the following taxa are threatened by lantana: *Colubrina oppositifolia, Nothocestrum breviflorum,* and *Zanthoxylum hawaiiense* (HHP 1991e4, 1991e8, 1991e15, 1991e16, 1991r4, 1991r12, 1991z11; HPCC 1991b, 1991h). *Leucaena leucocephala* (koa haole), a naturalized shrub which is sometimes the dominant species in low elevation, dry, disturbed areas on all of the main Hawaiian Islands, threatens *Nothocestrum breviflorum* (Geesnick *et al.* 1990, HHP 1991r12, HPCC 1991h). *Melia azedarach* (Chinaberry), a small tree widely cultivated and naturalized on most of the main Hawaiian Islands, threatens *Zanthoxylum hawaiiense* on Kauai (HHP 1991z11, Wagner *et al.* 1990). *Passiflora mollissima* (banana poka), a woody vine, poses a serious problem to mesic forests on Kauai and Hawaii by covering trees, reducing the amount of light which reaches trees as well as understory, and causing damage and death to trees by the weight of the vines. Animals, especially feral pigs, eat the fruit and distribute the seeds (Cuddihy and Stone 1990, Escobar 1990). Banana poka threatens *Clermontia lindseyana, Clermontia pyrularia,* and *Cyanea hamatiflora* ssp. *carlsonii* (HHP 1991a3, 1991aa; HPCC 1991c1 to 1991c3). After escaping from cultivation, *Schinus terebinthifolius* (Christmas berry) became naturalized on most of the main Hawaiian Islands (Wagner *et al.* 1990). It threatens *Colubrina oppositifolia, Mariscus fauriei,* and *Nothocestrum breviflorum* (HHP 1991e8, 1991e15, 1991e16, 1991q8, 1991r12; HPCC 1991b, 1991g).

Several hundred species of grasses have been introduced to the Hawaiian Islands, many for animal forage. Of the approximately 100 grass species which have become naturalized, 7 species threaten 12 of the 22 proposed plants. *Andropogon virginicus* (broomsedge) is a perennial, tufted grass which is naturalized on Oahu and Hawaii along roadsides and in disturbed dry to mesic forest and shrubland. This is a fire-adapted grass which threatens *Portulaca sclerocarpa* (Cuddihy and Stone 1990, HPCC 1991i, O'Connor 1990). *Anthoxanthum odoratum* (sweet vernalgrass) is a perennial, tufted grass which has naturalized in pastures, disturbed areas in wet forest, and sometimes in subalpine shrubland on Molokai, Maui, and Hawaii and is a threat to *Hesperocnide sandwicensis* (HPCC 1991e, O'Connor 1990). *Digitaria ciliaris* (Henry's crabgrass) is an annual grass which forms thick mats. It has naturalized on all the main Hawaiian Islands in lawns and pastures and threatens *Ischaemum byrone* (HPCC 1991f, O'Connor 1990). *Holcus lanatus* (common velvet grass), a perennial grass naturalized on most of the main Hawaiian Islands in wet, disturbed sites, threatens *Hesperocnide sandwicensis* (HPCC 1991e, O'Connor 1990). *Oplismenus hirtellus* (basketgrass) is a perennial grass which is naturalized in shaded mesic valleys and forests and sometimes in wet forests on most of the main Hawaiian Islands. *Mariscus fauriei* is threatened by basketgrass (HPCC 1991g, O'Connor 1990). *Pennisetum clandestinum* (Kikuyu grass), an aggressive, perennial grass introduced to Hawaii as a pasture grass, withstands trampling and grazing and has naturalized on four Hawaiian Islands in dry to mesic forest. It produces thick mats which choke out other plants and prevent their seedlings from establishing and has been declared a

noxious weed by the U.S. Department of Agriculture (7 CFR 360) (Medeiros *et al.* 1986, O'Connor 1990, Smith 1985). Kikuyu grass is a threat to *Clermontia lindseyana*, and *Zanthoxylum hawaiiense* (HPCC 1991a; A. Medeiros and S. Montgomery, pers. comms., 1992). *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, O'Connor 1990, Smith 1985). Fountain grass threatens one or more populations of the following proposed taxa: *Colubrina oppositifolia, Isodendrion pyrifolium, Nothocestrum breviflorum, Ochrosia kilaueaensis, Portulaca sclerocarpa, Silene hawaiiensis, Tetramolopium arenarium*, and *Zanthoxylum hawaiiense* (HHP 1991n3, 1991r5; HPCC 1990a, 1991h; J. Lau, S. Montgomery, and P. Weissich, pers. comms., 1992).

Because Hawaiian plants were subjected to fire during their evolution only in areas of volcanic activity and from occasional lightning strikes, they are not adapted to recurring fire regimes and are unable to recover well following a fire. Alien plants are often better adapted to fire than native plant species, and some fire-adapted grasses have become widespread in Hawaii; native shrubland can thus be converted to land dominated by alien grasses. The presence of such species in Hawaiian ecosystems greatly increases the intensity, extent, and frequency of fire, especially during drier months or drought. Fire-adapted alien species can reestablish in a burned area, resulting in a reduction in the amount of native vegetation after each fire. Fire can destroy dormant seeds as well as plants, even in steep or inaccessible areas. Fires may result from natural causes, or they may be accidentally or purposely set by hunters, other people, or military ordnance or personnel. Vegetation within PTA on the northwestern slope of Mauna Loa is particularly vulnerable to fire, as this is an area managed for recreational hunting and used for military training. The only known population of *Tetramolopium arenarium* occurs in Kipuka Kalawamauna, and to protect this area from fires, the U.S. Army has installed firebreaks and now redirects ordnance firing away from that kipuka. Planned military maneuvers are now being reevaluated in light of several Category 1 and listed endangered species within the boundaries of PTA and an Environmental Impact Statement is being prepared for the area in response to a court decision (Cuddihy and Stone 1990; Herbst and Fay 1979; R. Shaw, pers. comm., 1992). Fire is a threat to one or more populations of the following proposed taxa: *Colubrina oppositifolia, Hesperocnide sandwicensis, Isodendrion pyrifolium, Nothocestrum breviflorum, Ochrosia kilaueaensis, Portulaca sclerocarpa, Silene hawaiiensis, Tetramolopium arenarium, and Zanthoxylum hawaiiense* (HHP 1991e15, 1991r5; HPCC 1990a, 1990b, 1991b, 1991h; J. Lau and K. Nagata, pers. comms., 1992).

Land development for housing and commercial activities threatens *Pritchardia affinis* and potentially threatens the continued existence of *Isodendrion pyrifolium* since it grows in an area being converted to a golf course (C. Corn, K. Nagata, and P. Weissich, pers. comms., 1992).

Illicit cultivation of *Cannabis sativa* (marijuana) occurs in isolated portions of public and private lands in the Hawaiian Islands. This agricultural practice opens areas in native forest into which alien plants invade after the patches are abandoned (Medeiros *et al.* 1988). Marijuana cultivation is considered a threat to the integrity of the habitat of *Clermontia peleana* (Bruegmann 1990, CPC 1990b).

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

Unrestricted collecting for scientific or horticultural purposes and excessive visits by individuals interested in seeing rare plants could result from increased publicity. This is a potential threat to all of the proposed taxa, but especially to *Cyanea copelandii* ssp. *copelandii, Isodendrion pyrifolium*, and *Ochrosia kilaueaensis*, each of which has only 1 or 2 populations and a total of 10 or fewer known individuals or exist only as cultivated individuals. Any collection of whole plants or reproductive parts of any of these five species would cause an adverse impact on the gene pool and threaten the survival of the species.

People are more likely to come into contact with taxa which have populations near trails or roads or in recreational areas. Alien plants may be introduced into such areas as seeds on footwear, or people may cause erosion, trample plants, or start fires (Cuddihy and Stone 1990). The following proposed taxa have populations in recreational areas or close to roads or trails and are potentially threatened by human disturbance: *Clermontia peleana, Clermontia pyrularia, Colubrina oppositifolia, Cyrtandra giffardii, Hesperocnide sandwicensis, Ischaemum byrone, Nothocestrum breviflorum, Portulaca sclerocarpa, Silene hawaiiensis, Tetramolopium arenarium*, and *Zanthoxylum hawaiiense*.

C. Disease or Predation

Axis deer, cattle, goats, or sheep have been reported in areas where populations of most of the proposed taxa occur. As the taxa are not known to be unpalatable to these ungulates, predation is a probable threat where those animals have been reported, potentially affecting the following taxa: *Clermontia lindseyana, Cyanea hamatiflora* ssp. *carlsonii, Cyanea stictophylla, Hesperocnide sandwicensis, Hibiscadelphus hualalaiensis, Ischaemum byrone, Mariscus fauriei, Nothocestrum breviflorum, Ochrosia kilaueaensis, Portulaca sclerocarpa, Silene hawaiiensis, Tetramolopium arenarium*, and *Zanthoxylum hawaiiense*. The lack of seedlings of several of the taxa and the occurrence of some populations or taxa only in areas inaccessible to ungulates seem to indicate the effect that browsing mammals, especially cattle and goats, have had in restricting the distribution of these plants.

Of the four species of rodents which have been introduced to the Hawaiian Islands, the species with the greatest impact on the native flora and fauna is probably *Rattus rattus* (roof or black rat), which now occurs on all the main Hawaiian Islands around human habitations, in cultivated fields, and in dry to wet forests. Roof rats, and to a lesser extent *Mus musculus* (house mouse), *R. exulans* (Polynesian rat), and *R. norvegicus* (Norway rat) eat the fruits of some native plants, especially those with large, fleshy fruits. Many native Hawaiian plants produce their fruit over an extended period of time, and this produces a prolonged food supply which supports rodent populations. They also damage fruit of *Pritchardia affinis* (Beccari and Rock 1921). It is probable that rats damage the fruit of *Ochrosia kilaueaensis*, which has fleshy fruits and occurs in areas where rats are found. There is direct evidence that rats feed on *Clermontia peleana*, and, since rats are found in remote areas of most islands in Hawaii, it is likely that predation occurs on the other proposed taxa of *Clermontia* and *Cyanea*, potentially affecting *Clermontia*

lindseyana, Clermontia pyrularia, Cyanea copelandii ssp. *copelandii, Cyanea hamatiflora* ssp. *carlsonii, Cyanea shipmanii* and *Cyanea stictophylla* (HPCC 1990a; J. Lau, pers. comm., 1990).

Xylosandrus compactus (black twig borer) is a small beetle about 0.06 in (1.6 mm) in length which burrows into branches, introduces a pathogenic fungus as food for its larvae, and lays its eggs. Twigs, branches, and even the entire plant can be killed from such an infestation. Black twig borer is known to attach *Colubrina oppositifolia* and is a threat to this species (Cuddihy and Stone 1990; HHP 1991e9, 1991e16).

Pritchardia affinis is known to be susceptible to lethal yellows, which is a bacteria-like organism producing disease in many palms. This disease is not yet in Hawaii, but if it ever is accidentally introduced on plant material brought into the State, it is a potential threat to this species. In addition, cultivated loulu specimens in areas outside Hawaii may be affected by the disease (Hull 1980).

D. The Inadequacy of Existing Regulatory Mechanisms

Hawaii's Endangered Species Act states, "Any species of aquatic life, wildlife, or land plant that has been determined to be an endangered species pursuant to the (Federal) Endangered Species Act shall be deemed to be an endangered species under the provisions of this chapter * * *" (HRS, sect. 195D–4(a)). Federal listing would automatically invoke listing under Hawaii State law, which prohibits taking of endangered plants in the State and encourages conservation by State agencies (HRS, sect. 195D–4).

None of the 22 proposed taxa is presently listed as an endangered species by the State of Hawaii. Fifteen of the 22 proposed taxa have populations located on privately owned land. Two taxa, *Cyanea shipmanii* and *Cyanea stictophylla*, are found exclusively on private land. At least one population of each taxon except *Cyanea shipmanii, Cyanea stictophylla, Silene hawaiiensis*, and *Zanthoxylum hawaiiense* occurs on State land. *Colubrina oppositifolia, Cyanea copelandii* ssp. *copelandii, Cyrtandra giffardii, Cyrtandra tintinnabula*, and *Ischaemum byrone* each has one or more population located in State parks, Natural Area Reserves, or the State seabird sanctuary, which have rules and regulations for the protection of resources (Hawaii DLNR 1981; HRS, sects. 183D–4, 184–5, 195–5, and 195–8). However, the regulations are difficult to enforce because of limited personnel. One or more populations of at least 18 of the 22 proposed taxa located on land classified within conservation districts and owned by the State of Hawaii or private companies or individuals. Regardless of the owner, lands in these districts, among other purposes, are regarded as necessary for the protection of endemic biological resources and the maintenance or enhancement of the conservation of natural resources. Activities permitted in conservation districts are chosen by considering how best to make a multiple use of the land (HRS, sect. 205–2). Some uses, such as maintaining animals for hunting, are based on policy decisions, while others, such as preservation of endangered species, are mandated by both Federal and State laws. Requests for amendments to district boundaries or variances within existing classifications can be made by government agencies and private landowners (HRS, sect. 205–4). Before decisions about these requests are made, the impact of the proposed reclassification on "preservation or maintenance of important natural systems or habitat" (HRS, sects. 205–4, 205–17) as well as the maintenance of natural resources is required to be taken into account (HRS, sects. 205–2, 205–4). For any proposed land use change which will occur on county or State land, will be funded in part or whole by county or State funds, or will occur within land classified as conservation district, an environmental assessment is required to determine whether or not the environment will be significantly affected (HRS, chapt. 343). If it is found that an action will have a significant effect, preparation of a full Environmental Impact Statement is required. Hawaii environmental policy, and thus approval of land use, is required by law to safeguard "* * * the State's unique natural environmental characteristics * * *" (HRS, sect. 344–3(1)) and includes guidelines to "Protect endangered species of individual plants and animals * * *" (HRS, sect. 344–4(3)(A)). Federal listing, because it automatically invokes State listing, would also trigger these other State regulations protecting the plants.

State laws relating to the conservation of biological resources allow for the acquisition of land as well as the development and implementation of programs concerning the conservation of biological resources (HRS, sect. 195D–5(a)). The State also 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)). If listing were to occur, funds for these activities could be made available under section 6 of the Federal Act (State Cooperative Agreements). The Hawaii DLNR is mandated to initiate changes in conservation district boundaries to include "the habitat of rare native species of flora and fauna within the conservation district" (HRS, sect. 195D–5.1). State and Federal agencies have programs to locate, eradicate, and deter marijuana cultivation, which is a threat to one of the proposed taxa (CPC 1990b). Despite the existence of various State laws and regulations which give protection to Hawaii's native plants, their enforcement is difficult due to limited funding and personnel. Listing of these 22 plant taxa would reinforce and supplement the protection available under the State Act and other laws. The Federal Act would offer additional protection to these 22 taxa because, if they were to be listed as endangered, it would be a violation of the Act for any person to remove, cut, dig up, damage, or destroy 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 numbers of populations and individuals of most of these taxa increase 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. This constitutes a major threat to 16 of the 22 taxa being proposed (See Table 1.). Five of the proposed taxa, *Cyanea copelandii* ssp. *copelandii, Cyanea shipmanii, Isodendrion pyrifolium, Ochrosia kilaueaensis*, and *Tetramolopium arenarium*, are known from a single population. Seven other proposed taxa are known from only two to five populations. Seventeen of the proposed taxa are estimated to number no more than 100 known individuals. Six of these taxa, *Clermontia peleana, Clermontia pyrularia, Cyanea copelandii* ssp. *copelandii, Isodendrion pyrifolium, Ochrosia kilaueaensis*, and *Plantago hawaiensis*, number no more than 10 known individuals.

Natural changes to habitat and substrate can result in the death of individual plants as well as the destruction of their habitat. This especially affects the continued existence of taxa or populations with

limited numbers and/or narrow ranges and is often exacerbated by human disturbance and land use practices (See Factor A.). Landslides produced by burrowing seabirds in an offshore islet population of *Ischaemum byrone* are a potential threat to that species (HHP 1991o10; R. Hobdy, pers. comm., 1992). Flooding is a threat to *Clermontia peleana*, which often grows in a riparian habitat (Bruegmann 1990, CPC 1990b). A population of *Ischaemum byrone* is presumed to have been destroyed by volcanic activity, and another population is affected by drifting black sand (HHP 1991o3; C. Lamoureux, pers. comm., 1992). *Silene hawaiiensis* is also considered to be immediately threatened by volcanic activity (HPCC 1991j).

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these taxa in determining to propose this rule. Based on this evaluation, the preferred action is to list these 22 plant taxa as endangered. Sixteen of the taxa proposed for listing number no more than about 100 individuals and/or are known from 5 or fewer populations. The 22 taxa are threatened by one or more of the following: habitat degradation and/or predation by axis deer, cattle, goats, insects, pigs, rats, and sheep; competition from alien plants; fire and natural disasters; human and military impacts; and lack of legal protection or difficulty in enforcing laws which are already in effect. Small population size and limited distribution make these taxa particularly vulnerable to extinction and/or reduced reproductive vigor from stochastic events. Because these 22 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.

Critical habitat is not being proposed for the 22 taxa included in this rule, for reasons discussed in the "Critical Habitat" section of this proposal.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered. 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. As discussed under Factor B in the "Summary of Factors Affecting the Species," the taxa face numerous anthropogenic threats. The publication of precise maps and descriptions of critical habitat in the **Federal Register** and local newspapers as required in a proposal for 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 endangered publicizes the rarity of the plants and, thus, can make these plants attractive to researchers, curiosity seekers, or collectors of rare plants. All involved parties and the major landowners have been notified of the location and importance of protecting the habitat of these taxa. Protection of the habitat of the taxa will be addressed through the recovery process and through the section 7 consultation process. There are several Federal activities within the currently known habitats of these plants. One or more populations of 10 of the proposed taxa are located on federally owned and/or managed land. Four taxa are located in Hawaii Volcanoes National Park on the island of Hawaii and one taxon in Kalaupapa NHP on Molokai. Six taxa are located on military lands, including one species on Makua Military Reservation on Oahu and five taxa on PTA on the island of Hawaii. Two taxa are found in Hakalau Forest National Wildlife Refuge on the island of Hawaii. A population of one taxon occurs at a U.S. Coast Guard lighthouse on Maui. Federal laws already protect all plants on federally owned and/or managed land from damage or removal. The Service finds that designation of critical habitat for these taxa is not prudent at this time. Such a designation would increase the degree of threat from vandalism, collecting, or other human activities and is unlikely to aid in the conservation of these taxa.

Available Conservation Measures

Conservation measures provided to taxa listed as endangered under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the State and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any taxon that is proposed or listed as endangered and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to 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. Federal agencies that would become involved if any of their activities may affect these 22 species include the National Park Service, Department of Defense, Fish and Wildlife Service, and the U.S. Coast Guard. There are no other known Federal activities that occur within the present known habitat of these 22 plant taxa.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 for endangered plants set forth a series of general prohibitions and exceptions that apply to all endangered plant species. With respect to the 22 plant taxa proposed to be listed as endangered, all of the prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. These prohibitions, in part, make it illegal with respect to any endangered plant for any person subject to the jurisdiction of the United States to import or export; transport in interstate or foreign commerce in the course of a commercial activity; sell or offer for sale in interstate or foreign commerce; remove and reduce to possession any such species from areas under Federal jurisdiction; maliciously damage or destroy any such 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. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered plant species under certain circumstances. It

is anticipated that few trade permits would ever be sought or issued. The taxa are not common in cultivation nor in the wild, and only one taxa, *Pritchardia affinis*, is known to be in an active program of cultivation.

Requests for copies of the regulations concerning listed plants and inquiries regarding prohibitions and permits 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).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to these taxa;

(2) The location of any additional populations of these taxa and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of these taxa; and

(4) Current or planned activities in the subject area and their possible impacts on these taxa.

The final decision on this proposal will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to the Field Supervisor (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment 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** above).

Author

The author of this proposed rule is Zella 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.

Proposed Regulations Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

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

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order under the families indicated, and by adding two new families, "Plantaginaceae—Plantain family" and "Portulacaceae—Purslane family," in alphabetical order, 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						
•	•	•	•		•	•	
Apocynaceae—Dogbane family:							
•	•	•	•		•	•	
Ochrosia kilaueaensis	Holei	U.S.A. (HI)		E		NA	NA
•	•	•	•			•	
Arecaceae—Palm family:							
•	•	•	•		•	•	
Pritchardia affinis	Loulu	U.S.A. (HI)		E		NA	NA
•	•	•	•		•	•	
Asteraceae—Aster family:							
•	•	•	•		•	•	
Tetramolopium arenarium	None	U.S.A. (HI)		E		NA	NA
•	•	•	•		•	•	
Campanulacae—Bellflower family:							
•	•	•	•		•	•	
Clermontia lindseyana	'Oha wai	U.S.A. (HI)		E		NA	NA
•	•	•	•		•	•	
Clermontia peleana	'Oha wai	U.S.A. (HI)		E		NA	NA
•	•	•	•		•	•	
Clermontia pyrularia	'Oha wai	U.S.A. (HI)		E		NA	NA

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
*	*	*	*	*	*	*
Cyanea copelandii ssp. *copelandii*	Haha	U.S.A. (HI)	E		NA	NA
*	*	*	*	*	*	*
Cyanea hamatiflora ssp. *carlsonii*	Haha	U.S.A. (HI)	E		NA	NA
*	*	*	*	*	*	*
Cyanea shipmanii	Haha	U.S.A. (HI)	E		NA	NA
*	*	*	*	*	*	*
Cyanea stictophylla	Haha	U.S.A. (HI)	E		NA	NA
*	*	*	*	*	*	*
Caryophyllaceae—Pink family:						
*	*	*	*	*	*	*
Silene hawaiiensis	None	U.S.A. (HI)	E		NA	NA
*	*	*	*	*	*	*
Cyperaceae—Sedge family:						
*	*	*	*	*	*	*
Mariscus fauriei	None	U.S.A. (HI)	E		NA	NA
*	*	*	*	*	*	*
Gesneriaceae—Gesneria family:						
*	*	*	*	*	*	*
Cyrtandra giffardii	Ha'iwale	U.S.A. (HI)	E		NA	NA
*	*	*	*	*	*	*
Cyrtandra tintinnabula	Ha'iwale	U.S.A. (HI)	E		NA	NA
*	*	*	*	*	*	*
Plantaginaceae—Plantain family:						
*	*	*	*	*	*	*
Plantago hawaiensis	Laukahi kuahiwi	U.S.A. (HI)	E		NA	NA
*	*	*	*	*	*	*
Poaceae—Grass family:						
*	*	*	*	*	*	*
Ischaemum byrone	Hilo ischaemum	U.S.A. (HI)	E		NA	NA
*	*	*	*	*	*	*
Portulacaceae—Purslane family:						
*	*	*	*	*	*	*
Portulaca sclerocarpa	Po'e	U.S.A. (HI)	E		NA	NA
*	*	*	*	*	*	*
Rhamnaceae—Buckthorn family:						
*	*	*	*	*	*	*
Colubrina oppositifolia	Kauila	U.S.A. (HI)	E		NA	NA
*	*	*	*	*	*	*
Rutaceae—Citrus family:						
*	*	*	*	*	*	*
Zanthoxylum hawaiiense	A'e	U.S.A. (HI)	E		NA	NA
*	*	*	*	*	*	*
Solanaceae—Nightshade family:						
*	*	*	*	*	*	*
Nothocestrum breviflorum	'Aiea	U.S.A. (HI)	E		NA	NA
*	*	*	*	*	*	*
Urticaceae—Nettle family:						
*	*	*	*	*	*	*
Hesperocnide sandwicensis	None	U.S.A. (HI)	E		NA	NA
*	*	*	*	*	*	*
Violaceae—Violet family:						

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
*	*	*	*	*	*	
Isodendrion pyrifolium	Wahine noho kula	U.S.A. (HI)	E		NA	NA
*	*	*	*	*	*	

Dated: November 27, 1992.

Bruce Blanchard,

Acting Director, Fish and Willdlife Service.

[FR Doc. 92–30518 Filed 12–16–92; 8:45 am]

BILLING CODE 4310–55–M

50 CFR Part 17

RIN 1018–AB88

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for the Plant "Pritchardia aylmer-robinsonii" (Wahane)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes endangered status pursuant to the Endangered Species Act of 1973, as amended (Act), for the plant *Pritchardia aylmer-robinsonii* (wahane). The species grows only on the island of Niihau, Hawaiian Islands. The species and its habitat have been affected and are currently threatened by cattle, pigs, and sheep. Due to the small number of existing individuals and their very narrow distribution, this species is subject to reduced reproductive vigor and/or an increased likelihood of extinction from stochastic events. This proposal, if made final, would implement the Federal protection and recovery provisions provided by the Act. If made final, it would also implement State regulations protecting these plants as endangered species. Comments and materials related to this proposal are solicited.

DATES: Comments from all interested parties must be received by February 16, 1993. Public hearing requests must be received by February 1, 1993.

ADDRESSES: Comments and materials concerning this proposal should be sent to Robert P. Smith, Field Supervisor, Pacific Islands Office, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, room 6307, P.O. Box 50167, Honolulu, Hawaii 96850. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Derral R. Herbst, at the above address (808/541–2749).

SUPPLEMENTARY INFORMATION:

Background

In 1947, on one of his botanical collecting trips to Niihau, Harold St. John discovered a new species of the only genus of palms native to the Hawaiian Islands. He named it *Pritchardia aylmer-robinsonii* in honor of Aylmer F. Robinson, a member of the family which owns the island and a person who provided St. John with much information regarding the island's plants (St. John 1959).

Historically, *Pritchardia aylmer-robinsonii* was found at three sites in the eastern and central portions of the island of Niihau. Trees were found on Kaali Cliff and in Mokouia and Haao Valleys at elevations between 70 and 270 meters (m) (230 and 890 feet (ft)) (Hawaii Heritage Program (HHP) 1991a to 1991d). The most recent observations indicate that the only extant natural population consists of two plants still remaining on Kaali Cliff (Read and Hodel 1990). Originally a component of the Coastal Dry Forest, this species now occurs only in a rugged and steep area where it is somewhat protected from grazing animals. The substrate in the area is rocky talus, and *Prosopis pallida* (kiawe), an introduced tree, is one of the palm's few associated plant species. Other native plants which have been found in the area included *Brighamia insignis* ('olulu), *Cyperus trachysanthos* (pu'uka'a), *Lipochaeta lobata* var. *lobata* (nehe), and *Lobelia niihauensis* (no common name) HHP 1991e; St. John 1959; Keith Woolliams, Waimea Arboretum and Botanical Garden, pers. comm., 1980).

Pritchardia aylmer-robinsonii of the palm family (Arecaceae) is a fan-leaved tree about 7 to 15 m (23 to 50 ft) tall with a trunk approximately 20 to 30 centimeters (cm) (8 to 12 inches (in)) in diameter. The upper and lower leaf surfaces are green and hairless, and leaf segments are rather thin and drooping. The lower surfaces of the petiole and the leaf ribs are covered with dense, tan wool. The branched, hairless flower clusters are located among the leaves and are no longer than the petioles. Each flower comprises a cup-shaped, three-lobed calyx; three petals; six stamens; and a three-lobed stigma. The spherical, hard, black fruit is 1.8 to 2 cm (0.7 to 0.8 in) in diameter. This species is distinguished from others of the genus by the thin leaf texture and drooping leaf segments; the tan woolly hairs on the underside of the petiole and the leaf blade base; the stout hairless flower clusters which do not extend beyond the fan-shaped leaves; and the smaller spherical fruit (Read and Hodel 1990).

Hawaiian land practices prior to European contact probably destroyed most of the forest on Niihau. Grazing animals were introduced to the island beginning in the 1700s and have further decreased available habitat for *Pritchardia aylmer-robinsonii* as well as directly damaging trees, seedlings, and/or seeds. The entire island is now classified an Agricultural District, and it is managed as a cattle and sheep ranch. In addition to the two naturally occuring plants, there are approximately 200 immature cultivated individuals in existence. Reduced reproductive vigor and/or stochastic extinction due to the small number of reproductive plants are major threats. Rodents are known to eat the seeds of some palms of this genus, and they are a potential threat to this species as well, since they are found on Niihau (Beccari and Rock 1921; Cuddihy and Stone 1990; Department of Geography 1983; St. John 1959; Tomich 1986; Wagner et al. 1985; John Fay, U.S. Fish and Wildlife Service, pers. comm., 1992).

Federal action on this plant 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, *Pritchardia aylmer-robinsonii* was considered to be endangered. 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 *Pritchardia aylmer-robinsonii*. 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, *Pritchardia aylmer-robinsonii* was treated as a Category 1 candidate 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.

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 *Pritchardia aylmer-robinsonii* 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, 1990, and 1991. Publication of the present proposed rule constitutes the final 1-year finding for this species.

Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act (16 U.S.C. 1533) and regulations (50 CFR part 424) promulgated to implement the Act set forth the procedures for adding species to the Federal Lists. A species may be determined to be an endangered species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Pritchardia aylmer-robinsonii* St. John (wahane) are as follows:

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

The habitat of *Pritchardia aylmer-robinsonii* has undergone extreme alteration because of past and present land management practices, including agricultural use and deliberate introductions of alien animals. The Hawaiians made extensive agricultural use of Niihau before European contact. Modification of habitat by introduced animals, currently cattle (*Bos taurus*), pigs (*Sus scrofa*), sheep (*Ovis aries*) and formerly also goats (*Capra hircus*), is now one of the major threats facing *Pritchardia aylmer-robinsonii*.

Cattle, the wild progenitor of which was native to Europe, northern Africa, and southwestern Asia, was introduced to the Hawaiian Islands in 1793. Feral cattle formerly occurred on Niihau and caused much damage on the island. Originally native to the Middle East and India, goats were introduced to the Hawaiian Islands in 1792. All feral goats were removed from Niihau about 1910, but by that time they had caused considerable damage to the dry and mesic forests there. Sheep, the wild progenitor of which was native to western Eurasia, was also introduced to Niihau, is still raised there, and has done much damage to the native vegetation and substrate. Pig, originally native to Europe, northern Africa, Asia Minor, and Asia, was introduced to the Hawaiian Islands by the Polynesian immigrants and later from European ships. Pigs are currently present on Niihau, and, besides causing damage to substrate and plants, they are fond of the seeds of *Pritchardia aylmer-robinsonii* (Cuddihy and Stone 1990; Stone 1985; Tomich 1986; Wagner et al. 1985; J. Fay, pers. comm., 1992).

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

Because the natural population is on a privately owned island with limited public access, activities such as unrestricted collecting for scientific or horticultural purposes and excessive visits by individuals interested in seeing rare plants are unlikely to occur.

C. Disease or predation

Niihau is used as a cattle and sheep ranch with animals ranging in many areas of the island. Since *Pritchardia aylmer-robinsonii* is not known to be unpalatable to these ungulates, predation is a probable threat. In fact, St. John noted damage to one tree, which he believed had been caused by an animal (1959). The current occurrence of plants only in a rocky area inaccessible to ungulates seems to indicate the effect that browsing mammals have had in restricting the distribution of the species.

Roof or black rats (*Rattus rattus*), which occur on Niihau, have been reported to damage the fruit of other species of *Pritchardia* and thus pose a potential threat to *Pritchardia aylmer-robinsonii* (Beccari and Rock 1921). In addition, pigs eat the seeds of this plant.

D. The Inadequacy of Existing Regulatory Mechanisms

Pritchardia aylmer-robinsonii is not presently listed as an endangered species by the State of Hawaii. There are no State laws or existing regulatory mechanisms at the present time to protect this species. The known natural habitat of this species is located exclusively on privately owned land. Hawaii's Endangered Species Act states, "Any species of aquatic life, wildlife, or land plant that has been determined to be an endangered species pursuant to the [Federal] Endangered Species Act shall be deemed to be an endangered species under the provisions of this chapter * * *" (HRS, section 195D–4(a)). Federal listing would automatically invoke listing under Hawaii State law, which prohibits taking of endangered plants in the State and encourages conservation by State agencies (HRS, section 195D–4).

State laws relating to the conservation of biological resources allow for the acquisition of land as well as the development and implementation of programs concerning the conservation of biological resources (HRS, section 195D–5(a)). The State also may enter into agreements with Federal agencies to administer and manage any area required for the conservation, management, enhancement, or protection of endangered species (HRS, section 195D–5(c)). If listing were to occur, funds for these activities could be made available under section 6 of the Federal Act (State Cooperative Agreements). The Hawaii Department of Land and Natural Resources is mandated to initiate changes in conservation district boundaries to include "the habitat of rare native

species of flora and fauna within the conservation district" (HRS, section 195D–5.1). Currently, the entire island of Niihau is within the Agricultural District. Listing of this species would reinforce and supplement the protection available under the State Act and other laws. The Federal Act would offer additional protection to this species because, if it were to be listed as endangered, it would be a violation of the Act for any person to remove, cut, dig up, damage, or destroy 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 individuals of *Pritchardia aylmer-robinsonii* increases the potential for extinction from stochastic events. A single human-caused or natural environmental disturbance could destroy a significant percentage of the individuals or the only known natural population of the species. In addition, the limited gene pool may depress reproductive vigor.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Pritchardia aylmer-robinsonii* as endangered. This species is threatened by habitat degradation and/or predation by cattle, pigs, and sheep and lack of legal protection. Small population size and limited distribution make this species particularly vulnerable to reduced reproductive vigor and/or extinction from stochastic events. Because this species is in danger of extinction throughout all or a significant portion of its range, it fits the definition of endangered as defined in the Act. Critical habitat is not being proposed for *Pritchardia aylmer-robinsonii* for reasons discussed in the "Critical Habitat" section of this proposal.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered. The Service finds that designation of critical habitat is not presently prudent for *Pritchardia aylmer-robinsonii*. Such a determination would result in no known benefit to the species. The publication of a precise map and description of critical habitat in the **Federal Register** and local newspapers as required in a proposal for critical habitat would increase the degree of threat to this species from take or vandalism and, therefore, could contribute to its decline and increase enforcement problems. The listing of this species as endangered publicizes the rarity of the plants and, thus, can make the species attractive to researchers, curiosity seekers, or collectors of rare plants. All involved parties and the landowner have been notified of the location and importance of protecting the habitat of this species, which will be addressed through the recovery process. There are no known Federal activities within the currently known habitat of this species. Therefore, the Service finds that designation of critical habitat for this species is not prudent at this time, because such designation would increase the degree of threat from vandalism, collecting, or other human activities and because it is unlikely to aid in the conservation of this species.

Available Conservation Measures

Conservation measures provided to species listed as endangered under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the State and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any taxon that is proposed or listed as endangered and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to 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. There are no known Federal activities that occur within the habitat of *Pritchardia aylmer-robinsonii*.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 for endangered plants set forth a series of general prohibitions and exceptions that apply to all endangered plant species. With respect to *Pritchardia aylmer-robinsonii*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. These prohibitions, in part, make it illegal with respect to any endangered plant for any person subject to the jurisdiction of the United States to import or export; transport in interstate or foreign commerce in the course of a commercial activity; sell or offer for sale in interstate or foreign commerce; remove and reduce to possession any such species from areas under Federal jurisdiction; maliciously damage or destroy any such 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. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered plant species under certain circumstances. It is anticipated that few trade permits would ever be sought or issued for *Pritchardia aylmer-robinsonii*. The species is not common in the wild and is only rarely cultivated.

Requests for copies of the regulations concerning listed plants and inquiries regarding prohibitions and permits 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).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Pritchardia aylmer-robinsonii;*

(2) The location of any additional populations of *Pritchardia aylmer-robinsonii* and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of *Pritchardia aylmer-robinsonii;* and

(4) Current or planned activities in the subject area and their possible impacts on *Pritchardia aylmer-robinsonii.*

The final decision on this proposal will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to the Field Supervisor. (See **ADDRESSES** section.)

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment 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).

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Author

The author of this proposed rule is Zella 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.

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

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

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order under the family 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 aylmer-robinsonii	Wahane	U.S.A. (HI)	E		NA	NA
•	•	•	•		•	

Dated: November 27, 1992.

Bruce Blanchard,

Acting Director, Fish and Wildlife Service.

[FR Doc. 92–30517 Filed 12–16–92; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 57, No. 243
Thursday, December 17, 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

Forms Under Review by Office of Management and Budget

December 11, 1992.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250, (202) 690–2118.

New Collection

- Animal and Plant Health Inspection Service

Domestic Quarantines—Addendum 1
PPQ Forms 527, 530, 537, 540, and 586
On Occasion
State or local governments, Farms, Businesses or other for-profit, Federal Agencies or employees, and Small businesses or organizations; 55,818 Responses; 2,338 Hours

Victor Harabin, (301) 436–8645.

Donald E. Hulcher,
Deputy Departmental Clearance Officer.

[FR Doc. 92–30550 Filed 12–16–92; 8:45 am]
BILLING CODE 3410–01–M

Farmers Home Administration

Submission of Information Collection to OMB (Under Paperwork Reduction Act and 5 CFR Part 1320)

AGENCY: Farmers Home Administration, USDA.

ACTION: Notice.

SUMMARY: The information collection requirement described below has been submitted to OMB for expedited clearance under 5 CFR 1320.18. The agency solicits comments on subject submission. This action is necessary in order for the Agency to implement across-the-board verification requirements for eligible farm work and income status for labor housing occupancy.

ADDRESSES: Interested persons are invited to submit comments regarding this submission. Comments should refer to the proposal by name and should be sent to: Lisa Grove, USDA Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Tom Sanders, Senior Loan Officer, FmHA Housing Programs, Multi-family Housing Processing Division, Special Authorities Branch, USDA, Washington, DC 20250, Telephone (202) 720–1606 (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The agency has submitted the proposal for collection of information as described below, to OMB for clearance as required by the Paperwork Reduction Act (44 U.S.C. chapter 35). It is requested that OMB approve this submission within twenty-one days.

The supporting statement below explains the addition of Exhibit K–1, and the need and justification for Exhibit K–1, Verification of Domestic Farm Labor and Occupancy in Rent Free Housing.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507.

Supporting Statement

7 CFR 1944–D, Farm Labor Housing Loans and Grants

1. Explanation of the Circumstances that Make the Collection of Information Necessary

The Farmers Home Administration is adding Exhibit K–1, Verification of Domestic Farm Labor and Occupancy in Rent Free Housing, to this regulation in order to conduct program oversight consistent with the administrative powers provided to the Secretary of Agriculture for program regulation. Previously, there was no requirement or methodology for the farm owner to verify to the Agency the housing is being occupied by eligible farmworkers on a nonrental basis.

Under the authority of sections 514 and 516 of title V of the Housing Act of 1949 (Pub. L. 87–70 and Pub. L. 88–560 respectively), the Secretary is authorized to make loans to farm owners, family farm corporations and partnerships and association of farmers. Also, the Secretary of Agriculture is authorized to make loans and/or grants to nonprofit public, private, and farmworker organizations for developing farm labor housing. Developing farm labor housing includes the range of activities required to provide housing units, including acquisition and development of the site, construction of the housing units and related necessary facilities, provision of necessary equipment for tenants and managers, and all related legal, technical and administrative costs connected to this process.

The objective of the section 514 loan program is to provide decent, safe, and sanitary housing for farmworkers through the farm owner. This loan is made with the expectation that housing occupancy is the result of an employment contract and the housing is provided on a nonrental basis.

Public Law 93–375 provides administrative powers to the Secretary to carry out the provisions of title V of the Housing Act of 1949. This provides for making rules and regulations necessary to carry out the purposes of title V. FmHA has been charged with responsibility for protecting the interest of the taxpayer's funds and to assure that the objectives of the loan are carried out as intended. With the use of this verification exhibit in conjunction with

onsite inspections, FmHA will be able to determine that tenant occupancy requirements are in compliance with the loan purpose. It will provide the Agency with documentation of compliance.

Loan recipients are required to provide and maintain certain information to assure loan approval officials that they will not directly (or through contractual or other arrangements) subject any person, or cause any person to be subjected, to discrimination with respect to any program facility.

2. Indicate How, and by Whom, and for What Purpose the Information Is To Be Used and the Consequence to Federal Program if the Collection of Information Was Not Conducted

The exhibit, available through any FmHA State or District Office, is an exhibit to this Subpart and is provided to the borrower to inform the farmworker occupant that housing is rent free. This exhibit must be completed by every farmworker on occupancy of the housing. This document would be retained by the farmer for FmHA's inspection only as long as the farmworker occupies the unit. This document is in lieu of Form FmHA 1944–8, "Tenant Certification."

3. Describe any Consideration of the Use of Improved Information Technology To Reduce Burden and Any Technical or Legal Obstacles To Reducing Burden

The Agency is not aware of any available technology that could be substituted for this recordkeeping, except in the format proposed.

4. Describe Efforts To Identify Duplication

The recordkeeping for occupancy compliance requested of the farm owner is site specific and is not duplicated by any other known database activity within or outside of FmHA. Special effort has been made to minimize the burden on the farm owner by designing and using this exhibit rather than the more lengthy Form FmHA 1944–8, "Tenant Certification."

5. Show Specifically Why any Similar Information Already Available Cannot Be Used or Modified for Use for the Purposes Described in the Preceding Item 2

The recordkeeping information requested in the preceding item 2 is unique to the site and is not available through any other source.

6. Methods Used in the Collection of Information to Minimize the Burden on Farmers

The farmer's collection and presentation of information is in accordance with the FmHA compliance review process, occurring at least once every 3 years.

7. Describe the Consequence to Federal Program if the Collection Were Conducted Less Frequently

The verification of conditions of occupancy is a joint one-time effort of each occupant and farm owner and any less frequent recordkeeping would be inconsistent application of FmHA regulations for tenant occupancy.

8. Explain any Special Circumstances That Require the Collection To Be Conducted in a Manner Inconsistent With the Guidelines in 5 CFR 1320.6

There are no special circumstances which require information to be recorded in a manner inconsistent with the guidelines in 5 CFR 1320.6.

9. Describe Efforts To Consult With Persons Outside the Agency To Obtain Their Views on the Information To Be Recorded

There has been no contact with farm owners on the specific use of this exhibit. The need for this exhibit is the result of proposed rulemaking and resulting public comments. The exhibit was not contained in the proposed rule, but is the result of public comments concerning equitable treatment of farmworkers, regardless of whether they live on- or off-farm. The Agency agreed to implement a verification process for the occupants of on-farm labor housing.

10. Describe any Assurance of Confidentiality Provided to Respondents and the Basis for the Assurance in Statute, Regulation, or Agency Policy

The information recorded is to be kept in the borrower's files and be made available for review at FmHA's request. The information recorded complies with the Privacy Act of 1974 and OMB Circular A–180, "Responsibilities for the Maintenance of Records about Individuals by Federal Agencies." The Agency has no intent to further collect and tabulate the information collected by the farmer.

11. Provide Additional Justification for Any Questions of a Sensitive Nature That Are Commonly Considered Private

The information recorded contains no sensitive questions.

12. Provide Estimates of Annualized Cost to the Federal Government and to the Respondents

We estimate the annualized cost to the Federal Government for the reporting and recordkeeping requirements contained in this program to be approximately $190,000.00, including $900 for Exhibit K–1. Federal costs include staff salaries and expenses (primarily at the District Office level), printing and reproduction, and administrative overhead allocated to the labor housing program.

The Agency's annualized estimate of costs to the public is $850,000 for the Domestic Farm Labor Housing Program, including approximately $8,000 for Exhibit K–1. This is a sum of all direct and indirect costs that may be imposed upon program participants applying for a FmHA labor housing loan and or grant. Such costs include all one-time and recurring costs that may be incurred by a program applicant. In determining public cost, the Agency considered expenses which would typically be expected by a program applicant in the development of a project proposal for loan approval. The individual and organization applicants' estimated cost times the total number of applicants that are expected to be approved. It is further expressed in terms of expenses necessary to conduct business which directly concerns a specific project proposal under consideration by the Agency. Additionally, it is recognized that costs vary in relationship to the participant's degree of participation, type and size of entity, degree of sophistication, and the size, complexity and scope of project proposal. Therefore, the Agency has considered in its estimation of public cost the range of such costs in reaching an average project-by-project cost. These costs include information collection, compilation, printing, processing, designing, analyzing, and general administrative overhead associated with a typical loan application.

13. Provide Estimates of the Burden of the Collection of Information

The Agency estimates there will be at least one verification action per loan for an average of at least 60 loans per year. However, with the implementation of this rule, the existing borrowers will be asked to conform with and be provided with the necessary exhibit(s) for compliance with the new occupancy verification and recordkeeping rule. The first year usage of the Exhibit K–1 may be as high as 4,000. The level of usage for this Exhibit K–1 will be based on occupancy turnover in the housing units

and could exceed 40 exhibits per year for borrowers providing housing for migrant farmworkers.

14. Explain Reasons for Changes in Burden Including the Need for Any Increase

The Agency's estimate of burden differs from its last estimate of information collection burden submittal because of the addition of Exhibit K–1, "Verification of Domestic Farm Labor and Occupancy in Rent Free Housing." This exhibit is now required for all labor housing tenants of farm borrower housing.

15. For Collections of Information Whose Results Are Planned To Be Published

The recording of this information is not intended to be collected or published for use.

7 CFR 1944–D.—Farm Labor Housing Loans and Grants

Secretary of regulations	Title	Form No (If any)	Estimated No. of respondents	Reports filed annually	Total annual responses (d)×(e)	Est. No. of man-hrs. per response	Est. total manhours (f)×(g)
(A)	(B)	(C) Reporting Requirements Approved Under OMB Numbers	(D)	(E)	(F)	(G)	(H)
1944.164(g)	Farm and Home Plan	FmHA 431–2 (0575–0061)					
1944.164(h)	Nondiscrimination	FmHA 400–4 (0575–0018)					
1944.164(l)	Applicant's Environmental Impact Evaluation.	FmHA 1940–20 (0575–0094)					
1944.169(l)	Position Fidelity Schedule	FmHA 440–24 (0575–0015)					
1944.170(a)	For preapplication submission—Application for Federal Assistance (For Construction).	SF424.2 (0348–0006).	100	1	100	0.5	50
1944.171(a)	For application submission and short form–Application for Federal Assistance (For Construction).	SF424.2 (0348–0006).	75	1	75	0.5	38
1944.171(a) Exhibit A–5.	Statement of Budget, Income and Expense	FmHA 1930–7 (0575–0033)					
1944.175(a)(4)	Partial Payment Estimate	FmHA 1924–18 (0575–0042)					
1944.175(a)(6)	Release of Claimants	FmHA 1924–10 (0575–0042)					
1944.175(b)(2)	Estimates of Funds Needed 30-day Period Commencing.	FmHA 440–11 (0575–0015)					
1944.182	Request for Rental Assist	FmHA 1944–25 (0575–0033)					
1944.182	Tenant Certification	FmHA 1944–8 (0575–0033)					
1944.182	Request for Verification of Employment	FmHA 1910–5 (0575–0009)					
1944.182	Rental Assistance Agreement	FmHA 1944–27 (0575–0033)					
	Recordkeeping Requirements						
Exhibits C–F	Financial and Property Mgt Systems Required by Loan and Grant Agreements and Resolutions included with 7 CFR 1930–C Burden Package.	1930.122 Exhibit B–XIII (0575–0033)					
1944.154(d)(1) Exhibit K–1.	Verification of Domestic Farm Labor and Occupancy in Rent Free Housing.	Written	4,000			0.08	320
	Reporting Requirements—No Forms						
1944.164(e), 1944.164(g), Exhibits C–F and K.	Resolutions and Loan and Grant Agreements.	Written	75	1	75	3	225
1944.164(k)	Executive Order 12372	Written	15	1	15	5	75
1944.169(b)	Architectural and Engineering Services—Contracts.	Written	15	1	15	5	75
1944.169(e), 1944.175(g).	Insurance Coverage	Written	75	1	75	2	150
1944.169(f)&(j), Exhibit G.	Legal Services	Written	30	1	30	2	60
1944.169(h), Exhibit H.	Bond Counsel and Preparation of Notes and bonds.	Written	3	1	3	3	9
1944.169(l)(1) [1924.6(a)(3)].	Surety Bonding	Written	20	1	20	2	40
1944.170(a), Exhibit A–2.	Preapplication Determination of Need & Supporting Information (Individual).	Written	80	1	80	15	1,200
1944.170(a), Exhibit A–1.	Preapplication Determination of Need & Supporting Information (Organization).	Written	20	1	20	150	3,000
1944.171(a), Exhibit A–2.	Application Supporting Information (Individual).	Written	60	1	60	16	960

7 CFR 1944–D.—FARM LABOR HOUSING LOANS AND GRANTS—Continued

Secretary of regulations	Title	Form No. (if any)	Estimated No. of respondents	Reports filed annually	Total annual responses (d)×(e)	Est. No. of man-hrs. per response	Est. total manhours (f)×(g)
(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)
1944.171(a) Exhibit A–1.	Application Supporting Information (Organization).	Written	15	1	15	90	1,350
Exhibit B	Management Plan (Individual)	Written	60	1	60	5	300
Exhibit B	Management Plan (Organization)	Written	15	1	15	40	600
1944.176	Loan/grant Closing	Written	75	1	75	3	225
1944.176(c)	Prepayment Notice	Written	5	1	5	1	5
1944.178	Discrimination Complaints	Written	2	1	2	40	80
Total reporting					740		8,442
Total record-keeping.							320
Docket total					740		8,762

Date: November 12, 1992.

La Verne Ausman,

Administrator, Farmers Home Administration.

[FR Doc. 92–30395 Filed 12–16–92; 8:45 am]

BILLING CODE 3410–07–M

Forest Service

Withdrawal of "Management Guidelines and Inventory and Monitoring Protocols for the Mexican Spotted Owl in the Southwestern Region", Published in the "Federal Register," December 11, 1992 [57FR58785]

AGENCY: Forest Service, USDA.

ACTION: Notice: Withdrawal of "adoption of interim policy".

SUMMARY: Notice is hereby given that the Forest Service withdraws the interim policy, "Management Guidelines and Inventory and Monitoring Protocols for the Mexican Spotted Owl [MSO] in the Southwestern Region," published in the Federal Register of December 11, 1992 [57FR58785].

These Guidelines were not intended to provide management guidance for the Rocky Mountain Region and the Intermountain Region, which contain MSO habitat. In order to apply appropriate management to all MSO habitat, the Southwestern Region Management Guidelines are withdrawn to allow further consideration and coordination with other Forest Service Regions.

DATES: This withdrawal is effective on December 17, 1992.

ADDRESSES: Direct comments to: Larry Henson, Regional Forester, 2670, Southwestern Region, USDA Forest Service, 517 Gold Avenue SW., Albuquerque, New Mexico 87102.

FOR FURTHER INFORMATION CONTACT: James Lloyd, Director, Wildlife and Fisheries or Keith W. Fletcher, Mexican Spotted Owl Program Manager (505) 842–3261 or 842–3267.

Dated: December 14, 1992.

Larry Henson,

Regional Forester.

[FR Doc. 92–30709 Filed 12–16–92; 8:45 am]

BILLING CODE 3410–11–M

Delegation of Authority to Forest Supervisor, Chequamegon NF, Eastern Region

AGENCY: Forest Service, USDA.

ACTION: Notice of adoption of final policy.

SUMMARY: The Eastern Region of the Forest Service hereby gives notice of the delegation of authority by the Regional Forester to the Forest Supervisor of the Chequamegon NF to perform certain transactions related to the granting and terminating of easements on National Forest System lands.

EFFECTIVE DATE: This policy is effective upon issuance of an Eastern Region Supplement to Forest Service Manual 2730 delegating the above referenced authority. The effective date of this delegation of authority (and supplement) is December 8, 1992.

FOR FURTHER INFORMATION CONTACT: Questions about this policy should be addressed to Timothy G. Curtis, Natural Resources Staff, Forest Service, USDA, 310 West Wisconsin Ave., Milwaukee, WI 53203, (414–297–1902).

SUPPLEMENTARY INFORMATION: Pursuant to (36 CFR 251.52) and the delegation of authority from the Chief of the Forest Service as set forth in Forest Service Manual 2731.04, 2732.04, and 2733.04, the Regional Forester for the Eastern Region has determined that the Forest Supervisor of the Chequamegon NF has lands staff personnel sufficiently trained and experienced to permit the delegation of authority for the following:

1. To prepare and execute the Letter of Consent to the Regional Federal Highway Administrator for Department of Transportation Easements under authority of the Highway Act of August 27, 1958 (72 Stat. 23; U.S.C. 317). Additional responsibilities are identified in Forest Service Manual 2731.04.

2. Grant easements to public road agencies under the authority of the Forest Roads and Trail Act of October 13, 1964 (78 Stat. 1089; 16 U.S.C. 533). These easements may also be terminated by the Forest Supervisor with the consent of the grantee. Additional responsibilities are identified in Forest Service Manual 2732.04.

3. Issue easements and reservations for construction and use of roads, execute stipulations, and terminate such easements on the occurrence of a fixed or agreed upon condition, event, or time when the easement, by its terms provides for such termination, pursuant to the Federal Land Policy and Management Act of October 21, 1976, (90 Stat. 2743; 43 U.S.C. 1715). Additional responsibilities are identified in Forest Service Manual 2733.04.

This final policy will be distributed to Forest Service employees as an amendment to Chapter 2730 of the Forest Service Manual.

Dated: December 4, 1992.

Larry Payne,

Deputy Regional Forester for Administration.

[FR Doc. 92–30387 Filed 12–16–92; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Agency Information Collection Under Review by the Office of Management and Budget

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). The collection is for the Technology Administration of DOC.

Title: Application for Manufacturing Technology Fellowship.

Form Number: Agency—None; OMB—None.

Type of Request: New Collection.

Burden: 5,000 burden hours; 200 respondents; Average Hours Per Respondent—25 hours.

Needs and Uses: The U.S.-Japan Manufacturing Technology Fellowship Program is a new program that provides manufacturing engineers the opportunity to spend a year in Japan learning Japanese manufacturing techniques, culture and language. The information collected is needed to evaluate applicants for the program and to make selections.

Affected Public: Individuals, businesses or other for-profit institutions, small businesses or organizations.

Frequency: Annually.

Respondent's Obligation: Required for benefit.

OMB Desk Officer: Maya A. Bernstein, (202) 395–3785.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5327, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to the OMB Desk Officer, Maya A. Bernstein, (202) 395–3785, room 3235, New Executive Office Building, Washington, DC 20503.

Dated: December 11, 1992.

Edward Michals

Departmental Clearance Officer; Office of Management and Organization.

[FR Doc. 92–30644 Filed 12–16–92; 8:45 am]

BILLING CODE 3510–CW–F

National Oceanic and Atmospheric Administration

[Docket No. 921199–2299]

Taking and Importing of Marine Mammals Incidental to Commercial Fishing Operations

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

ACTION: Notice to importers; removal of intermediary nation embargoes.

SUMMARY: NMFS issues a notice to importers that the intermediary nation embargoes on yellowfin tuna and yellowfin tuna products from the nations of Canada, Colombia, France, Malaysia, the Netherlands Antilles, Singapore, and the United Kingdom that were imposed on January 31, 1992, have been lifted.

FOR FURTHER INFORMATION CONTACT: Gary Matlock, Acting Director, Southwest Region, NMFS, 501 West Ocean Boulevard, Long Beach, CA 90802–4213 (310/980–4001); or, Wanda L. Cain, Office of Protected Resources, NMFS, 1335 East-West Highway, Silver Spring, MD 20910 (301/713–2055).

SUPPLEMENTARY INFORMATION: On October 26, 1992, the President signed the International Dolphin Conservation Act of 1992. Among other things, that Act redefines intermediary nation to mean "* * * a nation that exports yellowfin tuna or yellowfin tuna products to the United States and that imports yellowfin tuna or yellowfin tuna products that are subject to a direct ban on importation into the United States pursuant to section 101(a)(2)(B)" of the Marine Mammal Protection Act.

NMFS has determined that the intermediary nation embargoes should be removed from those nations not identified as having imported yellowfin tuna from a nation under a primary embargo. On October 30, 1992, NMFS notified the Office of Trade Operations, U.S. Customs Service, that the prohibition on importation of yellowfin tuna and yellowfin tuna products from the following countries should be lifted: Canada, Colombia, Malaysia, the Netherlands Antilles, Singapore, and the United Kingdom.

On December 2, 1992, NMFS notified the U.S. Customs Service that France had submitted documentation required by the International Dolphin Conservation Act (Pub.L. 102–523) and the rules for importation of yellowfin tuna (50 CFR 216.24(e)(5)(vii)), which establish the requirements for intermediary nations, and that the intermediary nation yellowfin tuna embargo on France should be lifted. NMFS determined that the documentation provided by the Government of France constituted acceptable certification and reasonable proof that it did not import, between April and October 1992, yellowfin tuna or yellowfin tuna products banned from direct export to the United States.

Intermediary nation embargoes on all yellowfin tuna and yellowfin tuna products from the countries of Costa Rica, Italy, Japan and Spain will remain in place until NMFS obtains additional information on whether these countries have imported yellowfin tuna prohibited from direct export to the United States. Yellowfin tuna and products derived from yellowfin tuna harvested in the eastern tropical Pacific Ocean by purse seine vessels of Mexico, Venezuela and Colombia remain under primary embargoes because harvesting vessels from those nations do not meet the standards for the protection of marine mammals comparable to those in effect for vessels of the United States.

Dated: December 10, 1992.

Nancy Foster,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 92–30629 Filed 12–16–92; 8:45 am]

BILLING CODE 3510–22–M

South Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The South Atlantic Fishery Management Council will hold a Snapper-Grouper Assessment Group meeting on January 11–12, 1993, at the Town and Country Inn, 2008 Savannah Highway, Charleston, SC; telephone: (803) 571–1000. The meeting will begin on January 11 at 1:30 p.m. and will end on January 12 by 12:30 p.m. The agenda is as follows:

The Assessment Group will review available wreckfish information and make a recommendation on total allowable catch (TAC) for the 1993–94 fishing year.

The Assessment Group will review stock assessment reports and a report on quota/share transactions that have occurred this year. The group will make its recommendation at the Council's January 25–29 meeting in Indialantic, FL.

The meeting will be open to the public; however, no public comments will be taken at this time. Public input will be accepted at the January Council meeting.

Wreckfish are managed under an Individual Transferable Quota program, where only those who hold percentage

shares are allowed to participate in the fishery. This year's fishery operated under a two-million-pound TAC.

For more information contact Carrie Knight, Public Information Officer: South Atlantic Fishery Management Council: One Southpark Circle, suite 306; Charleston, SC 29407–4699; telephone: (803) 571–4366.

Dated: December 11, 1992.

David S. Crestin,

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

[FR Doc. 92–30639 Filed 12–16–92; 8:45 am]

BILLING CODE 3510–22–M

South Atlantic Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The South Atlantic Fishery Management Council will hold Personnel and Finance Committee meetings on January 14, 1993, at the Town and Country Inn, 2008 Savannah Highway, Charleston, SC; telephone: (803) 571–4366. The meetings will begin on January 14 at 8:30 a.m. until 10 a.m. and from 10 a.m. until 12 p.m. respectively. The Personnel Committee's meeting will be held in closed session (not open to the public).

The Personnel Committee will discuss Council staffing changes. The Finance Committee will review changes to the staff's pension plan.

For more information contact Carrie Knight, Public Information Officer; South Atlantic Fishery Management Council; One Southpark Circle, suite 306; Charleston, SC 29407–4699; telephone: (803) 571–4366.

Dated: December 14, 1992.

David S. Crestin,

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

[FR Doc. 92–30638 Filed 12–16–92; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals

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

ACTION: Receipt of Application for Permit (P321B).

SUMMARY: Notice is hereby given that Sherman C. Jones, III, 4001 Santa Maria Drive, Chesapeake, VA 23321, has applied in due form for a Permit to take marine mammals 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).

The Applicant seeks authorization to unintentionally harass up to 700 Atlantic bottlenose dolphin (*Tursiops truncatus*) annually during aerial and boat surveys. Aerial surveys are expected to be flown 21 times per year and individual dolphin are expected to be sighted at each occurrence. Boat cruises are expected to be conducted up to 100 days per year (April–October). The Applicant indicates that the most frequently resighted dolphin in the proposed study would be "taken" 66 times per year, and the average resighted dolphin would be seen about 30 times per year. Data thus acquired should provide adequate information to accurately describe movement, micro-habitat utilization, social affiliation and migratory patterns for many individuals in this population. The activities will occur in waters off Virginia and North Carolina. The permit is requested for a duration of five years and the Applicant proposes to initiate the work April 1993.

ADDRESSES: Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, NOAA, U.S. Department of Commerce, 1335 East-West Hwy., Room 7324, Silver Spring, MD 20910, within 30 days of the publication of this notice.

Documents submitted in connection with the above application are available for review, by appointment, in the Permits Division, Office of Protected Resources, National Marine Fisheries Service, NOAA, 1335 East-West Hwy., Suite 7324, Silver Spring, MD 20910 (301/713–2289);

Director, Northeast Region, National Marine Fisheries Service, NOAA, One Blackburn Drive, Gloucester, MA 01930 (508/281–9200); and

Director, Southeast Region, National Marine Fisheries Service, NOAA, 9450 Koger Blvd., St. Petersburg, FL 33702 (813/893–3141).

Dated: December 10, 1992.

Michael F. Tillman,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 92–30632 Filed 12–16–92; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Modification No. 4 to Permit No. 621.

Notice is hereby given that pursuant to the provisions of Sections 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), Public Display Permit No. 621 (P35F) issued to Miami Seaquarium, 4400 Rickenbacker Causeway, Miami, Florida 33149 on December 18, 1987 (52 FR 48746), modified on March 25, 1988 (53 FR 10553), December 22, 1989 (55 FR 52), and October 30, 1991 (56 FR 56505), is further modified as follows:

Section B.3, first sentence is changed to read:

3. The authority to import these marine mammals shall extend from the date of issuance through June 30, 1993.

This modification becomes effective upon publication in the **Federal Register.**

Documents submitted in connection with the above modification are available for review by appointment in the following offices:

Office of Protected Resources, National Marine Fisheries Service, NOAA, 1335 East West Highway, Room 7324, Silver Spring, Maryland, 20910 (301/713–2289); and

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702 (813/893–3141).

Dated: December 10, 1992.

Michael F. Tillman,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 92–30631 Filed 12–16–92; 8:45 am]

BILLING CODE 3510–22–M

DEPARTMENT OF DEFENSE

Department of the Army

[PPTMR DOD 4500.34–R]

Change to the Tender Service

AGENCY: Military Traffic Management Command, DOD.

ACTION: Notice of change.

SUMMARY: Appendix A, Tender of Service, paragraph 40h, of DOD 4500.34–R, requires firearms to be placed in the number one external shipping container and readily accessible for examination by customs. Paragraph 9005d, of DOD 4500.34–R, reiterates the same requirement. DOD 4500.34–R does not provide instruction on when containers will be marked. In several instances, weapons packed in the number one container while the shipment was at residence, were incorrectly marked when taken back to the agent's warehouse. Upon arrival at the port, the entire shipment had to be unpacked to locate the weapons before

the shipment could clear customs. To resolve the issue, paragraphs 3002b and 40d, of DOD 4500.34–R will be changed to require the container number and the member's name to be stenciled on the number one container while the shipment is at residence. If the surface of the container will not accommodate stenciling, a military shipment label, DD Form 1387, shall be affixed while the shipment is at residence.

ADDRESSES: Headquarters, Military Traffic Management Command, ATTN: MTPP–QO, 5611 Columbia Pike, Falls Church, VA 22041–5050.

DATES: Comments must be received on or before February 16, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Donald Dette, Military Traffic Management Command, Attn: MTPP–QO, 5611 Columbia Pike, Falls Church, VA 22041–5050, telephone (703) 757–1710.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 92–30602 Filed 12–16–92; 8:45 am]

BILLING CODE 3710–08–M

Corps of Engineers

Department of the Army Construction Productivity Advancement Research (CPAR) Program

AGENCY: Corps of Engineers, Department of the Army, DOD.

ACTION: Notice of availability.

SUMMARY: The purpose of this notice is to inform potential applicants of a program of cost-shared research, development and commercialization/technology transfer (R&D) projects between the U.S. Army Corps of Engineers (Corps) and the U.S. construction industry. The purpose of the Construction Productivity Advancement Research (DPAR) Program is to assist the U.S. construction industry in enhancing its productivity and domestic and international competitive position through the development and commercialization of advanced technologies, materials and construction management systems.

DATES: Effective date is December 21, 1992. Proposals will be accepted until March 19, 1993.

ADDRESSES: Proposals for the Fiscal Year 1993 CPAR Program should be submitted to the Corps laboratories identified in the CPAR Guidelines for Participation, dated December 1992. Copies of the Guidelines may be obtained by writing to: HQUSACE, Attn: CERD–C, 20 Massachusetts Avenue, NW. Washington, DC 20314–1000, or by calling (202) 272–0257.

FOR FURTHER INFORMATION CONTACT: Mr. Jesse A. Pfeiffer, Jr., P.E.; HQUSACE, CERD–D; 20 Massachusetts Avenue, NW.; Washington, DC 20314–1000, or call (202) 272–1846 or 272–0257.

SUPPLEMENTARY INFORMATION: CPAR is a program consisting of cost-shared projects executed by partnerships between the Corps, the U.S. construction industry (contractors, equipment and material manufacturers and suppliers, architects, engineers, financial organizations), public and private foundations, trade and professional organizations, State and local governments, academic institutions and other entities who are interested in enhancing construction productivity and competitiveness. CPAR was created to help the domestic construction industry improve productivity and regain its competitive edge nationally and internationally by building on the foundation of the existing Corps Construction R&D Program and laboratory resources through an expansion and leveraging effect that cost-shared partnerships provide. The objective of CPAR is to facilitate research, development and application of advanced technologies through cooperative R&D, field demonstration, licensing agreements and other means of commercialization, technology transfer and reduction-to-practice. Advancing the productivity and competitiveness of the U.S. construction industry will provide savings in construction costs for the Government and U.S. industries, and result in a boost to the U.S. economy in general. R&D efforts conducted under CPAR will be based on proposals received from U.S. construction industry entities and others, as noted above, which can be addressed effectively by a partnership and which will benefit both the construction industry and the Corps.

Participation in CPAR is open to any U.S. private firm, including corporations, partnerships, limited partnerships and industrial development organizations; public and private foundations; non-profit organizations; units of State and local governments; academic institutions; and others who have an interest in and the capability to address CPAR objectives. As provided by law, special consideration will be given to small business firms and consortia involving small business firms. Preference will be given to business units located in the United States that agree to substantially manufacture and apply the products in the United States. Consideration will be given to a potential partner that is subject to the control of a foreign company or government if that foreign government permits U.S. agencies, organizations, or other persons to enter into cooperative research and development agreements and licensing agreements.

The cost of each CPAR project will be shared by the Corps and the construction industry partner(s). Specific cost-sharing terms will be defined for each proposed project prior to submission of the proposal to Corps Headquarters (HQUSACE) for approval. "In-kind" services and/or use of facilities may be considered in arriving at a cost-sharing agreement. As required by law, not more than fifty (50) percent of the total cost of a CPAR project will be provided by the Corps and not less than five (5) percent of the construction industry partner's share of the cost must be contributed in cash. The Corps and the construction industry partner(s) may each contribute personnel, services, facilities, property, patent licenses (or assignment or options to the patent license) and money. No costs previously incurred by the Corps or the construction industry partner(s) on the subject matter of the CPAR project may be recovered in the cost-sharing agreement.

A CPAR Cooperative Research and Development Agreement (CPAR–CRDA) specific to each project will be negotiated between the Corps and the U.S. construction industry partner(s). The CPAR–CRDA is defined by law as neither a procurement contract nor an assistance agreement (grant or cooperative agreement). The CPAR–CRDA will contain, in addition to the cost-sharing terms, all other conditions and responsibilities necessary to complete the project and commercialize/transfer the technology, including rights to inventions. It is anticipated that one of the most effective ways of assuring the new technology is disseminated to the public is to provide the construction industry partner(s) with a proprietary "ownership" interest in the new technology. Therefore, to the extent permitted by law, the Corps will generally grant to the industry partner(s) an option to licenses or assignments for any intellectual property made in whole or in part by a Federal employee under the CPAR–CRDA, retaining a non-exclusive, non-transferable, irrevocable, paid-up license to practice the invention or have the invention practiced throughout the world on behalf of the Government. The Corps may, without

further notice to others, agree to negotiate an exclusive license or waive title to intellectual property if such actions would facilitate commercialization and use of the technology. To the greatest extent possible and appropriate, licensing and assignments will be on a non-exclusive basis. In some cases, where appropriate, royalties will be negotiated and collected by the Government in exchange for such licenses or assignments.

CPAR is designed to promote and assist in the advancement of ideas and technology which will have a direct, positive impact on construction productivity and Corps mission accomplishment. CPAR is focused on four major areas: Planning and design improvement, improved construction site productivity, advanced materials, and innovative methods to commercialize and transfer R&D products to the construction industry. However, any idea for improving construction productivity will be considered. Ideas that cannot define a direct and demonstrable link to the advancement of construction productivity will not be accepted into the CPAR Program. Areas of interest include, but are not limited to:

Planning and Design Improvement

- Computer-Aided Planning and Engineering Tools.
- Advanced Site Investigation Technology.
- Knowledge-Based Cost Estimating Systems.
- Computer-Aided Design Systems.
- Total Integrated Design Systems.
- Expert Systems/Artificial Intelligence.
- Materials Selection Systems.
- Advanced Technology Selection Systems.

Improved Construction Site Productivity

- Construction Management Methods.
- Materials Handling.
- Automated Construction/Robotics.
- Expert Systems.
- Marine Construction.
- Automated Inspection and Quality Control.
- Advanced Excavating and Tunneling.
- Cold Weather Construction.
- Computer-Aided Construction Management Systems.

Advanced Materials

- High-Performance Cementitious Materials.
- Structural Polymers.
- Advanced Ceramics.
- Metal Matrix Composites.
- Advanced Fabrication Systems.
- Adhesives/Fasteners.
- Geomodifiers/Geotextiles.

Commercialization/Technology Transfer Innovation

- User-Based Technology Utilization Processes.
- Technical Support Services for Users.
- Skills Upgrading Methods.
- Cost and Performance Information Exchange Systems.
- Technology Risk Analysis.

Proposal Review Process

Proposals received by the Corps laboratories which meet CPAR criteria may be discussed and further developed, as necessary, by the laboratory and construction industry partner(s). The following criteria will be used to evaluate the proposals. The first two evaluation factors are of equal importance and are more significant than the remaining factors, which are listed in descending order of importance:

1. Potential Impact on U.S. Construction Industry Productivity

High—Technological advancement which would have major beneficial impact on current construction industry processes, materials and/or equipment and will have a demonstrable major beneficial impact on construction industry productivity and effectiveness.

Medium—Technological advancement which would improve on and/or demonstrate currently available processes, materials and/or equipment not in widespread construction industry use and which would have a demonstrable beneficial impact on construction industry productivity and effectiveness.

Low—Technological advancement which would upgrade construction industry processes, materials and/or equipment in current use and which would have a limited but beneficial impact on construction industry productivity and effectiveness.

2. Potential Impact on the Corps of Engineers

High—Technological advancement which would be a major improvement in technology and procedures currently used by the Corps and which would have a demonstrable major beneficial impact on the Corps.

Medium—Technological advancement which would significantly improve currently used Corps technology and procedures and which would result in demonstrable benefits for the Corps.

Low—Technological innovation which would upgrade current Corps standard technology and procedures and which would have a limited but beneficial impact on the Corps.

3. Commercialization/Technology Transfer

High—Plan/concepts stated for broad-scale use/adoption of the product by non-Federal and Federal organizations and the production/marketing/dissemination of the product by the non-Federal partner(s).

Medium—Plans/concepts stated for some beneficial use/adoption of the product by non-Federal and Federal organizations.

Low—Plans/concepts stated for limited but beneficial use/adoption of the product by non-Federal and Federal organizations.

4. Ease of Adoption

High—Technology provides construction industry productivity and effectiveness improvement with minimal equipment, training, materials and operating costs beyond the cost of current practice.

Medium—Technology provides construction industry productivity and effectiveness improvements, but requires moderate additional equipment, training, materials, and operating costs beyond the cost of current practice.

5. Probability of Achieving Projected Productivity and Effectiveness Enhancement

High—Some risk, requires innovative application of current knowledge, high probability of success.

Medium—Moderate risk, concepts exist but are unproven, good probability of success.

Low—High risk, basic concepts must be developed and proven, uncertain probability of success.

6. Project Duration

High—Project, including demonstration of benefits, can be completed in 3 years or less.

Medium—Project, including demonstration of benefits, can be completed in 4 years or less.

Low—Project, including demonstration of benefits, will require more than 4 years to complete.

7. R&D Investment

High—Project will obligate the Corps to invest less than $300,000 per year.

Medium—Project will obligate the Corps to invest between $300,000 and $500,000 per year.

Low—Project will obligate the Corps to invest more than $500,000 per year.

After discussions between the laboratory and the construction industry partner(s), a CPAR Executive Summary of the proposal will be prepared by the laboratory. The Executive Summary will contain the project objective and approach to be followed in developing the specific end product(s), all expected costs and cost-sharing arrangements, time needed to complete, expected benefits to the U.S. construction industry and the Corps, and a proposed commercialization/technology transfer plan.

Corps laboratories will submit their recommended Executive Summaries to HQUSACE for consideration under the CPAR Program. The CPAR Executive Summaries will be reviewed and recommendations made by the CPAR Executive Committee in HQUSACE. The CPAR Executive Committee is composed of senior-level HQUSACE managers. The Director of Civil Works, HQUSACE, will act on the recommendations of the CPAR Executive Committee in approving the annual CPAR program.

All information and data furnished by the potential construction industry partner(s) will be used for evaluation purposes only and will be safeguarded from unauthorized disclosure in accordance with applicable laws. Protection of information during and after completion of a CPAR project will be defined and agreed to in the CPAR–CRDA. Classified information and data will be handled in accordance with Army regulations.

Additional Requirements

Applicants are reminded that a false statement may be grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment. Except where declared by law or approved by the head of agency, no award of Federal funds shall be made to an applicant who is delinquent on a Federal debt until the delinquent account is made current or satisfactory arrangements are made between affected agencies and the debtor. No award will be made to a debarred or suspended firm or organization.

Classification

This document is not a major rule requiring a regulatory analysis under Executive Order 12291 because it will not have an annual impact on the economy of $100 million or more, nor will it result in a major increase in costs or prices for any group, nor have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. It is not a major Federal action requiring an environmental assessment under the National Environment Policy Act. The CPAR Program does not involve the mandatory payment of any matching funds from a State or local government, and does not affect directly any State or local government. Accordingly, the Corps determined that Executive Order 12372 is not applicable to CPAR. This notice does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612. CPAR is being carried out under the authority of section 7, Water Resources Development Act of 1988 (Pub. L. 100–676) (33 U.S.C. 2313).

Dated: December 4, 1992.

W.L. Mayhew,

Colonel, General Staff; Executive, OASA(CW).

[FR Doc. 92–30601 Filed 12–16–92; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0035]

Clearance Request for Claims and Appeals

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0035).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Claims and Appeals.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein, Office of Federal Acquisition Policy, GSA (202) 501–3775.

SUPPLEMENTARY INFORMATION:

A. Purpose

It is the Government's policy to try to resolve all contractual issues by mutual agreement at the contracting officer's level without litigation. Contractor's claims must be submitted in writing to the contracting officer for a decision. Claims exceeding $50,000 must be accompanied by a certification that (1) the claim is made in good faith; (2) supporting data are accurate and complete; and (3) the amount requested accurately reflects the contract adjustment for which the contractor believes the Government is liable. Contractors may appeal the contracting officer's decision by submitting written appeals to the appropriate officials.

B. Annual Reporting Burden

The annual reporting burden is estimated as follows: Respondents, 7,500; responses per respondent, 20; total annual responses, 150,000; preparation hours per response, 1; and total response burden hours, 150,000.

OBTAINING COPIES OF PROPOSALS: Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0035, Claims and Appeals, in all correspondence.

Dated: December 9, 1992.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 92–30537 Filed 12–16–92; 8:45 am]

BILLING CODE 6820–34–M

[OMB Control No. 9000–0031]

Clearance Request for Contractor Use of Government Supply Sources

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0031).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Contractor Use of Government Supply Sources.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein, Office of Federal Acquisition Policy, GSA (202) 501–3775.

SUPPLEMENTARY INFORMATION:

A. Purpose

When it is in the best interest of the Government and when supplies and services are required by a Government contract, contracting officers may authorize contractors to use Government supply sources in performing certain contracts. Contractors placing orders under Federal Supply Schedules or Personal Property Rehabilitation Price Schedules must follow the terms of the applicable schedule. To place orders, firms will submit the initial FEDSTRIP or MILSTRIP requisitions or the Optional Form 347, a copy of the authorization to order, and a statement regarding authorization to the firm holding the schedule contract.

The information informs the schedule contractor that the ordering contractor is authorized to use this Government supply source and fills the ordering contractor's order under the terms of the Government contract.

B. Annual Reporting Burden

The annual reporting burden is estimated as follows: Respondents, 300; responses per respondent, 7; total annual responses, 2,100; preparation hours per response, .25; and total response burden hours, 525.

OBTAINING COPIES OF PROPOSALS: Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0031, Contractor Use of Government Supply Sources, in all correspondence.

Dated: December 9, 1992.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 92–30535 Filed 12–16–92; 8:45 am]

BILLING CODE 6820–34–M

[OMB Control No. 9000–0032]

Clearance Request for Contractor Use of Interagency Motor Pool Vehicles

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0032).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Contractor Use of Interagency Motor Pool Vehicles.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein, Office of Federal Acquisition Policy, GSA (202) 501–3775.

SUPPLEMENTARY INFORMATION:

A. Purpose

If it is in the best interest of the Government, the contracting officer may authorize cost-reimbursement contractors to obtain, for official purposes only, interagency motor pool vehicles and related services. Contractors' requests for vehicles must contain two copies of the agency authorization, the number of vehicles and related services required and period of use, a list of employees who are authorized to request the vehicles, a listing of equipment authorized to be serviced, and billing instructions and address.

A written statement that the contractor will assume, without the right of reimbursement from the Government, the cost or expense of any use of the motor pool vehicles and services not related to the performance of the contract is necessary before the contracting officer may authorize cost-reimbursement contractors to obtain interagency motor pool vehicles and related services.

The information is used by the Government to determine that it is in the Government's best interest to authorize a cost-reimbursement contractor to obtain, for official purposes only, interagency motor pool vehicles and related services, and to provide those vehicles.

B. Annual Reporting Burden

The annual reporting burden is estimated as follows: Respondents, 70; responses per respondent, 2; total annual responses, 140; preparation hours per response, .5; and total response burden hours, 70.

OBTAINING COPIES OF PROPOSALS: Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0032, Contractor Use of Interagency Motor Pool Vehicles, in all correspondence.

Dated: December 9, 1992.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 92–30536 Filed 12–16–92; 8:45 am]

BILLING CODE 6820–34–M

[OMB Control No. 9000–0053]

Clearance Request for Permits, Authorities, or Franchises Certification

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0053).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Permits, Authorities, or Franchises Certification.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

This certification and copies of authorizations are needed to determine that the offeror has obtained all authorizations, permits, etc., required in connection with transporting the material involved. The contracting officer reviews the certification and any documents requested to ensure that the offeror has complied with all regulatory requirements and has obtained any permits, licenses, etc., that are needed.

B. Annual Reporting Burden

The annual reporting burden is estimated as follows: Respondents, 1,106; responses per respondent, 3; total annual responses, 3,318; preparation hours per response, .094; and total response burden hours, 312.

OBTAINING COPIES OF PROPOSALS: Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0053, Permits, Authorities, or Franchises Certification, in all correspondence.

Dated: December 4, 1992.
Beverly Fayson,
FAR Secretariat.
[FR Doc. 92–30538 Filed 12–16–92; 8:45 am]
BILLING CODE 6820–34–M

[OMB Control No. 9000–0055]

Clearance Request for Freight Classification Description

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0055).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Freight Classification Description.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

When the Government purchases supplies that are new to the supply system, nonstandard, or modifications of previously shipped items, and different freight classifications may apply, offerors are requested to indicate the full Uniform Freight Classification or National Motor Freight Classification. The information is used to determine the proper freight rate for the supplies.

B. Annual Reporting Burden

The annual reporting burden is estimated as follows: Respondents, 2,640; responses per respondent, 3; total annual responses, 7,920; preparation hours per response, .167; and total response burden hours, 1,323.

OBTAINING COPIES OF PROPOSALS: Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0055, Freight Classification Description, in all correspondence.

Dated: December 4, 1992.
Beverly Fayson,
FAR Secretariat.
[FR Doc. 92–30539 Filed 12–16–92; 8:45 am]
BILLING CODE 6820–34–M

[OMB Control No. 9000–0057]

Clearance Request for Evaluation of Export Offers

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0057).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Evaluation of Export Offers.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

Offers submitted in response to Government solicitations must be evaluated and awards made on the basis of the lowest laid down cost to the Government at the overseas port of discharge, via methods and ports compatible with required delivery dates and conditions affecting transportation known at the time of evaluation. Offers are evaluated on the basis of shipment through the port resulting in the lowest cost to the Government. This provision collects information regarding the vendor's preference for delivery ports. The information is used to evaluate offers and award a contract based on the lowest cost to the Government.

B. Annual Reporting Burden

The annual reporting burden is estimated as follows: Respondents, 100; responses per respondent, 4; total annual responses, 400; preparation hours per response, 25; and total response burden hours, 100.

OBTAINING COPIES OF PROPOSALS: Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0057, Evaluation of Export Offers, in all correspondence.

Dated: December 4, 1992.
Beverly Fayson,
Far Secretariat.
[FR Doc. 92–30540 Filed 12–16–92; 8:45 am]
BILLING CODE 6820–34–M

[OMB Control No. 9000–0056]

Clearance Request for Report of Shipment

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0056).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Report of Shipment.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

Military (and, as required, civilian agency) storage and distribution points, depots, and other receiving activities require advance notice of large shipments enroute from contractors' plants. Timely receipt of notices by the consignee transportation office precludes the incurring of demurrage and vehicle detention charges. The information is used to alert the receiving activity of the arrival of a large shipment.

B. Annual Reporting Burden

The annual reporting burden is estimated as follows: Respondents, 250; responses per respondent, 4; total annual responses, 1,000; preparation hours per response, .167; and total response burden hours, 167.

OBTAINING COPIES OF PROPOSALS: Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0056, Report of Shipment, in all correspondence.

Dated: December 4, 1992.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 92–30541 Filed 12–16–92; 8:45 am]

BILLING CODE 6820–34–M

[OMB Control No. 9000–0107]

Clearance Request for Notice of Radioactive Materials

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0107).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Notice of Radioactive Materials.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

The clause at FAR 52.223–7, Notice of Radioactive Materials, requires contractors to notify the Government prior to delivery of items containing radioactive materials. The purpose of the notification is to alert receiving activities that appropriate safeguards may need to be instituted. The notice shall specify the part or parts of the items which contain radioactive materials, a description of the materials, the name and activity of the isotope, the manufacturer of the materials, and any other information known to the Contractor which will put users of the items on notice as to the hazards involved.

B. Annual Reporting Burden

The annual reporting burden is estimated as follows: Respondents, 500; responses per respondent, 5; total annual responses, 2,500; preparation hours per response, 1; and total response burden hours, 2,500.

OBTAINING COPIES OF PROPOSALS: Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0107, Notice of Radioactive Materials, in all correspondence.

Dated: December 4, 1992.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 92–30542 Filed 12–16–92; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF ENERGY

Financial Assistance Award Intent To Award Noncompetitive Grant to Tulane University

AGENCY: U.S. Department of Energy.

ACTION: Notice of intent to make a noncompetitive financial assistance award.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.6(a)(5), it is making a discretionary financial assistance award based on the criterion set forth at 10 CFR 600.7(b)(2)(i)(G) to Tulane University under Grant Number DE–FG01–93EW53023 to initiate a comprehensive aquatic environmental hazards research program. The proposed grant will provide funding in the estimated amount of $25 million to conduct research and education activities to address the ecological and health oriented aspects of environmental restoration and waste management in aquatic environments.

SCOPE: The Department of Energy has determined in accordance with 10 CFR 600.7(b)(2)(i)(G) that a noncompetitive award based on the application submitted by Tulane University is in the public interest. This program, to be carried out jointly by Tulane University and Xavier University, will bring together national and international resources of other colleges and universities and professional societies in a national center to increase the public awareness of the risks associated with radioactive and mixed wastes in aquatic environments. The team of experts will conduct research, provide information, data, and human resources to analyze environmental risks in aquatic ecosystems in an objective manner; and identify needs and develop programs to address the critical shortage of well educated, highly skilled technical and scientific personnel in the area of energy related environmental restoration and waste management, particularly as related to aquatic ecosystems. The Department of Energy has determined it to be in the public interest to award a noncompetitive grant to Tulane University to work towards development of a more objective approach to issues concerning the ecological and health impacts of environmental restoration and waste management activities in aquatic ecosystems; to promote the development of low-risk, cost-effective environmental remediation technologies; and to elevate the public's awareness of the health and other risks associated with radioactive and mixed waste management and control in aquatic ecosystems. The anticipated project period of the proposed grant is 60 months from the effective date of award.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Placement and Administration, ATTN: John L. Wengle, PR–322.2, 1000 Independence Avenue, SW., Washington, DC 20585.

Scott Sheffield,

Acting Director, Division "B", Office of Placement and Administration.

[FR Doc. 92–30621 Filed 12–16–92; 8:45 am]

BILLING CODE 6450–01–M

ENERGY INFORMATION ADMINISTRATION

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, Energy.

ACTION: Notice of request to discontinue submitted to the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for discontinuance as a result of final rule RM92–10. This rule was issued by the Federal Energy Regulatory Commission on November 5, 1992 to streamline and eliminate, where possible, electric power regulations and reporting requirements.

Each entry contains the following information: (1) The sponsor of the collection (a DOE component which term includes the Federal Energy Regulatory Commission (FERC)); (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, extension, or reinstatement; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses per

respondent annually; (11) A response; (12) The estimated total annual respondent burden; and (13) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed by January 19, 1993. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so, as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the EIA contact listed below.)

ADDRESSES: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Jay Casselberry, Office of Statistical Standards, (EI–73), Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Mr. Casselberry may be telephoned at (202) 254–5348.

SUPPLEMENTARY INFORMATION: The energy information collection submitted to OMB for discontinuance was:

1. Federal Energy Regulatory Commission
2. FERC–557
3. 1902–0042
4. Public Utilities Regulatory Policy Act, Section 133 Cost of Service Data
5. Not Applicable
6. Not Applicable
7. Not Applicable
8. Not Applicable
9. Not Applicable
10. Not Applicable
11. Not Applicable
12. Not Applicable
13. On November 5, 1992, the Commission issued RM92–10, a final rule, to streamline and eliminate, where possible, electric power regulations and reporting requirements. In particular, the Commission is eliminating in part 290 of its regulations the requirements for collection of "cost-of-service" information under section 133 of the Public Utility Regulatory Policies Act of 1978 (PURPA).

Statutory Authority: Sec. 5(a), 5(b), 13(b), and 52, Pub. L. No. 93–275, Federal Energy Administration Act of 1974, 15 U.S.C. 764(a), 764(b), 772(b), and 790a.

Issued in Washington, DC, December 9, 1992.

Douglas R. Hale,

Acting Director, Statistical Standards, Energy Information Administration.

[FR Doc. 92–30619 Filed 12–16–92; 8:45 am]

BILLING CODE 6450–01–M

Inventory of Current DOE Reporting and Record-Keeping Requirements

AGENCY: Energy Information Administration, Energy.

ACTION: Department of Energy's inventory of energy information collections, including reporting and record-keeping requirements.

SUMMARY: The Energy Information Administration (EIA) of the Department of Energy (DOE) herein publishes an inventory of energy information collections (including reporting and recordkeeping requirements) which had Office of Management and Budget (OMB) approval on October 1, 1992, the first day of Fiscal Year (FY) 1993. The inventory is published for the use of respondents and other interested parties. DOE's management and procurement collections are the responsibility of DOE's Office of Administration and Human Resource Management and are not included in these notices.

The listing that follows includes DOE energy information collections that had OMB approval as of October 1, 1992. For each information collection utilizing a structured form, Part I lists the current DOE control or form number, the title of the requirement, the OMB control number, and the OMB approval expiration date. Part II lists those information collections which do not utilize structured forms and the corresponding citations from the Code of Federal Regulations.

FOR FURTHER INFORMATION CONTACT: Jay Casselberry, Energy Information Administration (EI–73), 1000 Independence Avenue, SW., Washington, DC 20585, (202) 254–5348. Information on the availability of single, blank copies of those information collections utilizing structured forms can be obtained by contacting the National Energy Information Center (EI–231), 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–8800.

SUPPLEMENTARY INFORMATION: As DOE's energy information collections are submitted for review and approval to OMB during FY 1993 (October 1, 1992 through September 30, 1993), **Federal Register** notices will be published informing the public to that effect. Such notices not only provide an opportunity for the public to review and comment on the collections but also notify the public of proposed changes to the inventory. Questions concerning the inventory or the changes that take place during FY 1993 may be directed to Mr. Casselberry at the address above.

Statutory Authority: Sec. 5(a), 5(b), 13(b), and 52, Pub. L. 93–275, Federal Energy Administration Act of 1974, as amended, 15 U.S.C. 764(a), 764(b), 772(b), and 790a.

Issued in Washington, DC, December 10, 1992.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

PART I—DOE ACTIVE INFORMATION COLLECTIONS

[October 1, 1992 Inventory]

DOE No.	Title	OMB control No.	Expiration date
Civilian Radioactive Waste Management:			
NWPA-830R-A-G	Standard Contract for Disposal of Spent Nuclear Fuel and/or High Level Waste (R Contract is on standby; A-F—Annual report is on standby; G—Quarterly Report—Standard Remittance Advice is active).	19010260	11/30/93
RW-859	Nuclear Fuel Data	19010287	12/31/94
Conservation and Renewable Energy:			
CE-63A/B	Annual Solar Thermal Collector Manufacturers Survey and Annual Photovoltaic Module/Cell Manufacturers Survey.	19010292	08/31/95
Domestic and International Energy Policy:			
EIA-767(2)	Steam Electric Plant Operation and Design Report	19010267	12/31/92
EP-872	Flue Gas Desulfurization Information system	19010299	09/30/93
Economic Regulatory Administration:			
ERA-424D	Tertiary Incentive program Annual Report of Prepaid Expenses	19030069	03/31/93
Emergency Planning and Operations:			
OE-411	Coordinated Regional Bulk Power Supply Program Report	19010286	10/31/93
OE-417R	Power System Emergency Reporting Procedures	19010288	10/31/92
Energy Information Administration:			
EIA-1	Weekly Coal Monitoring Report—General Industries and Blast Furnaces (Standby Form).	19050167	03/31/93
EIA-3	Quarterly Coal Consumption Report—Manufacturing Plants	19050167	03/31/93
EIA-4	Weekly Coal Monitoring Report—Coke Plants (Standby Form)	19050167	03/31/93
EIA-5	Coke Plant Report—Quarterly	19050167	03/31/93
EIA-6	Coal Distribution Report	19050167	03/31/93
EIA-7A	Coal Production Report	19050167	03/31/93
EIA-14	Refiners' Monthly Cost Report	19050174	12/31/93
EIA-20	Weekly Telephone Survey of Coal Burning Utilities (Standby Form)	19050167	03/31/93
EIA-23	Annual Survey of Domestic Oil and Gas Reserves	19050057	12/31/94
EIA-23P	Oil and Gas Well Operator List Update Report	19050057	12/31/94
EIA-28	Financial Reporting system	19050149	09/30/93
EIA-64A	Annual Report of the Origin of Natural Gas Liquids Production	19050057	12/31/94
EIA-176	Annual Report of Natural and Supplemental Gas Supply and Disposition	19050175	12/31/93
EIA-182	Domestic Crude Oil First Purchase Report	19050174	12/31/93
EIA-191	Underground Gas Storage Report	19050175	12/31/93
EIA-191S	Weekly Underground Gas Storage Report (Standby Form)	19050175	12/31/93
EIA-254	Semiannual Report on Status of Reactor Construction	19050160	12/31/94
EIA-412	Annual Report of Public Electric Utilities	19050129	12/31/92
EIA-457A/G	Residential Energy Consumption Survey	19050092	05/31/93
EIA-627	Annual Quantity and Value of Natural Gas Report	19050175	12/31/93
EIA-759	Monthly Power Plant Report	19050129	12/31/92
EIA-782A	Refiners'/Gas Plant Operators' Monthly Petroleum Product Sales Report	19050174	12/31/93
EIA-782B	Resellers'/Retailers' Monthly Petroleum Product Sales Report	19050174	12/31/93
EIA-782C	Monthly Report of Petroleum Products Sold Into States for Consumption	19050174	12/31/93
EIA-800	Weekly Refinery Report	19050165	04/30/93
EIA-801	Weekly Bulk Terminal Report	19050165	04/30/93
EIA-802	Weekly Product Pipeline Report	19050165	04/30/93
EIA-803	Weekly Crude Oil Stocks Report	19050165	04/30/93
EIA-804	Weekly Imports Report	19050165	04/30/93
EIA-807	Propane Telephone Survey	19050165	04/30/93
EIA-810	Monthly Refinery Report	19050165	04/30/93
EIA-811	Monthly Bulk Terminal Report	19050165	04/30/93
EIA-812	Monthly Product Pipeline Report	19050165	04/30/93
EIA-813	Monthly Crude Oil Report	19050165	04/30/93
EIA-814	Monthly Imports Report	19050165	04/30/93
EIA-816	Monthly Natural Gas Liquids Report	19050165	04/30/93
EIA-817	Monthly Tanker and Barge Movement Report	19050165	04/30/93
EIA-818	International Energy Agency Imports/Stocks-at-Sea Report	19050165	04/30/93
EIA-819	Monthly Oxygenate Telephone Survey	19050183	04/30/93
EIA-820	Annual Refinery Report	19050165	04/30/93
EIA-821	Annual Fuel Oil and Kerosene Sales Report	19050174	12/31/93
EIA-822A/D	Oxygenate Operations Identification Survey	19050182	04/30/93
EIA-825	Petroleum Facility Operator Identification Survey	19050165	04/30/93
EIA-826	Monthly Electric Utility Sales and Revenue Report with State Distributions	19050129	12/31/92
EIA-846A/D	Manufacturing Energy Consumption Survey	19050169	11/30/94
EIA-851	Domestic Uranium Mining Production Report	19050160	12/31/94
EIA-856	Monthly Foreign Crude Oil Acquisition Report	19050174	12/31/93
EIA-857	Monthly Report of Natural Gas Purchases and Deliveries to Consumers	19050175	12/31/93
EIA-857S	Weekly Report of Natural Gas Supplies and Deliveries to Consumers (Standby Form)	19050175	12/31/93
EIA-858	Uranium Industry Annual Survey	19050160	12/31/94
EIA-860	Annual Electric Generator Report	19050129	12/31/92
EIA-861	Annual Electric Utility Report	19050129	12/31/92
EIA-863	Petroleum Product Sales Identification Survey	19050174	12/31/93
EIA-867	Annual Nonutility Power Producer Report	19050177	12/31/92
EIA-871A/F	Commercial Buildings Energy Consumption Survey	19050145	06/30/95
EIA-876A/E	Residential Transportation Energy Consumption Survey	19050068	09/30/93
EIA-877	Winter Heating Fuels Telephone Survey	19050174	12/31/93
EIA-878	Motor Gasoline Price Survey	19050181	12/31/93
EIA-881(P)	Farm Energy Consumption Survey Pretest	19050185	12/31/92
Federal Energy Regulatory Commission:			
FERC-1	Annual Report of Major Electric Utilities, Licensees and Others	19020021	07/31/95

PART I—DOE ACTIVE INFORMATION COLLECTIONS—Continued

[October 1, 1992 Inventory]

DOE No.	Title	OMB control No.	Expiration date
FERC–1–F	Annual Report of Nonmajor Public Utilities and Licensees	19020029	07/31/95
FERC–2	Annual Report of Major Natural Gas Companies	19020028	08/31/93
FERC–2A	Annual Report of Nonmajor Natural Gas Companies	19020030	08/31/93
FERC–6	Annual Report of Oil Pipeline Companies	19020022	08/31/93
FERC–8	Underground Gas Storage Report	19020026	08/31/95
FERC–11	Natural Gas Pipeline Company Monthly Statement	19020032	05/31/93
FERC–15	Interstate Pipeline's Annual Report of Gas Supply	19020037	08/31/93
FERC–16	Report of Gas Supply and Requirements	19020025	08/31/95
FERC–73	Oil Pipeline Service Life Data	19020019	08/31/95
FERC–80	Licensed Hydropower Development Recreation Report	19020106	11/30/92
FERC–121	Application for Determination of the Maximum Lawful Price Under the Natural Gas Policy Act of 1978.	19020038	12/31/92
FERC–423	Monthly Report of Cost and Quality of Fuels for Electric Plants	19020024	09/30/93
FERC–561	Annual Report of Interlocking Positions	19020099	10/31/92
FERC–580	Fuel Purchase Practices	19020137	03/31/94
FERC–597	Customer Satisfaction Survey	19020163	01/31/94
FERC–714	Annual Electric Power System Report	19020140	12/31/94
FPC–14	Annual Report for Importers and Exporters of Natural Gas	19020027	08/31/95
Fossil Energy:			
EIA–767(3)	Steam Electric Plant Operation and Design Report	19010298	12/31/92
FE–748	Enhanced Oil Recovery Annual Report	19010291	11/30/92
FE–781R	Annual Report of International Electric Export/Import Data	19010296	09/30/94

PART II—DOE ACTIVE INFORMATION-COLLECTIONS NOT UTILIZING STRUCTURED FORMS

[October 1, 1992 Inventory]

DOE No.	Title	OMB control No.	Expiration date	CFR citation
Economic Regulatory Administration:				
ERA–766R	Recordkeeping Requirements of DOE's General Allocation and Price Rules.	19030073	09/30/93	10 CFR 210.1.
Federal Energy Regulatory Commission:				
FERC–16A	Monitoring (Omnibus) Report (stand-by authority)	19020105	12/31/92	By FERC Order.
FERC–16AT	Interstate Pipeline Curtailment (Telephone) Survey	19020139	11/30/93	By FERC Order.
FERC–314A	Application For Small Producer Exemption	19020006	12/31/92	18 CFR 250.10.
FERC–500	Application For License for Hydropower Projects Greater Than 5MW.	19020058	07/31/94	18 CFR 4.38, 4.39, 4.40, 4.41, 4.50, 4.51, 4.200–.202
FERC–505	Application for License for Water Projects 5MW or Less	19020115	07/31/94	18 CFR 4.61, 4.71, 4.92, 4.93, 4.107, 4.108, 4.112, 4.113, 4.201–.202.
FERC–510	Application for Surrender of Electric License	19020068	04–30–93	18 CFR 6.1, 6.3.
FERC–511	Application for Transfer of Electric License	19020069	10/31/94	18 CFR 9.1, 9.2, 9.10.
FERC–512	Application for Preliminary Permit	19020073	09/30/94	18 CFR 4.31, 4.32, 4.33, 4.81, 4.82.
FERC–515	Hydropower License—Declaration of Intention	19020079	09/30/94	18 CFR 24.1.
FERC–516	Electric Rate Schedule Filings	19020096	05/31/95	18 CFR 35, subpart A, 35.12–.16, 35.26, 35.30, 35.31, 292, 301.
FERC–519	Disposition of Facilities, Mergers, and Acquisitions of Securities	19020082	01/31/93	18 CFR 33.
FERC–519	Disposition of Facilities, Mergers, and Acquisitions of Securities	19020082	01/31/93	18 CFR 33.
FERC–520	Application for Authority to Hold Interlocking Directorate Positions	19020083	01/31/93	18 CFR 45.
FERC–521	Headwater Benefits	19020087	08/31/95	18 CFR 11.16.
FERC–523	Application for Authorization of The Issuance of Securities or the Assumption of Liabilities.	19020043	09/30/95	18 CFR 34.
FERC–525	Financial Audits	19020092	02/28/95	18 CFR 101, 201
FERC–530	Gas Producer Certificate: Abandonment/Termination	19020051	12/31/92	18 CFR 2.64 157.30, 250.7.
FERC–531	Gas Producer Certificates: New Service/Amendments	19020052	12/31/92	18 CFR 2.75, 154.91–154.111, 157.23–157.28, 157.40, 250.5, 250.10.
FERC–532	Gas Producer Rate: Filing	19020055	12/31/92	18 CFR 2.56(A), 154.91–.110, 157.301, 250.8–.9, 250.5, 250.14.
FERC–534	Gas Producer Rates: Application for Production-Related Costs	19020057	12/31/92	18 CFR 154.94(K), 270, 271.1100–271.1101, 271.1103–271.1105.

PART II—DOE ACTIVE INFORMATION COLLECTIONS NOT UTILIZING STRUCTURED FORMS—Continued

[October 1, 1992 Inventory]

DOE No.	Title	OMB control No.	Expiration date	CFR citation
FERC–537	Gas Pipeline Certificates: Construction, Acquisition & Abandonment.	19020060	04/30/95	18 CFR 2.79, 157.5–.21, .100, .201–.218, 159.1, 284.107, .127, .221.
FERC–538	Gas Pipeline Certificate: Initial Service	19020061	01/31/94	18 CFR 156.3, 156.4, 156.5.
FERC–539	Gas Pipeline Certificate: Import/Export Related	19020062	04/30/94	18 CFR 153.
FERC–541	Gas Pipeline Certificate: Curtailment Plan	19020066	03/31/94	18 CFR 2.78, 281.
FERC–542	Gas Pipeline Rates: Initial Rates, Rate Change, and PGA Tracking.	19020070	03/31/94	18 CFR 154.38, 154.61–154.67.
FERC–542A	Tracking and Recovery of Alaska Natural Gas Transportation System.	19020129	12/31/93	18 CFR 154.201–154.213.
FERC–543	Gas Pipeline Rates: Purchased Gas Adjustment Tracking	19020152	03/31/94	18 CFR 154.38.
FERC–544	Gas Pipeline Rates: Rate Change (Formal)	19020153	02/28/94	18 CFR 154.63–154.67.
FERC–545	Gas Pipeline Rates: Rate Change (Non-Formal)	19020154	07/31/93	18 CFR 154.63–154.67.
FERC–546	Gas Pipeline Rates: Certificated Rate Filings	19020155	02/28/94	18 CFR 154.62–154.67.
FERC–547	Gas Pipeline Rates: Refund Obligations	19020084	05/31/94	18 CFR 154.38(5)(V)(H), 270.101, 273.301, 273.302.
FERC–548	Staff Adjustment Under Natural Gas Policy Act Section 502(c)	19020085	12/31/92	18 CFR 270–277, 281, 282, 284, 385, subpart K.
FERC–549	Gas Pipeline Rates: Natural Gas Policy Act Title III Transactions	19020086	08/31/94	18 CFR 284 Sub. A/D/E/H, 284.7–.11, .102, .105, .106, .122, and others.
FERC–550	Oil Pipeline Rates: Tariff Filings	19020089	08/31/95	18 CFR 340–345, 347.
FERC–555	Records Retention Requirements	19020098	04/30/95	18 CFR 125, 158, 160.1, 225, 276.108, 277.210, 356.
FERC–556	Cogeneration and Small Power Production	19020075	10/31/94	18 CFR 292.
FERC–557	PURPA Section 133: Cost of Service Data	19020042	02/28/93	18 CFR 290.
FERC–558	Format of Contract Summary for Applications for Certificates of Public Convenience and Necessity.	19020109	12/31/92	18 CFR 250.5.
FERC–559	Independent Producer Rate Change or Initial Billing Statement	19020036	12/31/92	18 CFR 250.14.
FERC–566	Report of Utility's Twenty Largest Purchasers	19020114	02/28/95	18 CFR 46.3.
FERC–567	Gas Pipeline Certificates: Annual Reports of System Flow Diagrams and System Capacity.	19020005	09/30/93	18 CFR 260.8, 284.12.
FERC–568	Well Category Determination	19020112	12/31/92	18 CFR 271.703, 274, 275.
FERC–569	Establishment of Deadlines for 1st Sellers to Make and Report Refunds Refund Obligation (producers).	19020111	12/31/92	18 CFR 273.
FERC–570	Recordkeeping Requirements for Certain Sales of Natural Gas	19020124	12/31/92	18 CFR 271.503, 271.603, 271.903.
FERC–574	Gas Pipeline Certificates—Hinshaw Exemption	19020116	08/31/95	18 CFR 152.
FERC–576	Report by Certain Natural Gas Companies on Service Interruptions.	190200004	05/31/95	18 CFR 260.9.
FERC–577	Gas Pipeline Certificates: Environmental Impact Statement	19020128	12/31/94	18 CFR 2.80, 2.82, 157.14.
FERC–577(A)	Gas Pipeline Certificates: Environmental Impact Statement (Interim Rule).	19020161	11/30/92	18 CFR 2.80, 2.82, 157.14.
FERC–581	Management and Procurement Reporting and Recordkeeping Requirements.	19020130	05/31/93	48 CFR subtitle A, chapter 9.
FERC–582	Oil, Gas, and Electric Fees and Annual Charges	19020132	07/31/93	18 CFR 381.106, 382.105(A), 382.201(B)(4).
FERC–583	Hydroelectric Fees and Annual Charges	19020136	06/30/93	18 CFR 11.1, 11.3, 11.4, 11.6.
FERC–585	Reports on Electric Energy Shortages & Contingency Plans Under PURPA 206.	19020138	09/30/93	18 CFR 294.
FERC–588	Emergency Natural Gas Sale, Transportation and Exchange Transactions.	19020144	06/30/94	18 CFR 284, subpart I.
FERC–590	Wellhead Pricing: Pricing Investigations	19020147	12/31/92	Not applicable.
FERC–592	Marketing Affiliates of Interstate Pipelines	19020157	12/31/92	18 CFR 161.250.
Fossil Energy				
FE–329R	Regulatory Reporting and Recordkeeping Requirements Pursuant to 10 CFR 500, 501, 503, and 504.	19010297	06/30/95	10 CFR 500, 501, 503, 504, 505, 508, 515.
FE–746R	Import and Export of Natural Gas	19010294	01/31/93	10 CFR 205, 590.
FE–750R	Annual Compilation of Proposed and Final List of Utilities Covered by Public Utility Regulatory Policies Act and National Energy Conservation Policy Act.	19010295	04/30/94	10 CFR 463.

[FR Doc. 92-30532 Filed 12-16-92; 8:45 am]
BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER93-234-000, et al.]

New England Power Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. New England Power Co.

[Docket No. ER93-234-000]

December 9, 1992.

Take notice that on November 25, 1992, New England Power Company (NEP) tendered for filing a Notice of Termination of Rate Schedule 335 between NEP and Green Mountain Power Corporation.

Comment date: December 23, 1992, in accordance with Standard Paragraph E at the end of this notice.

2. Cincinnati Gas & Electric Co.

[Docket No. ER92-33-002]

December 9, 1992.

Take notice that on November 23, 1992, Cincinnati Gas & Electric Company (CG&E) tendered for filing its compliance refund report in the above-referenced docket.

Comment date: December 23, 1992, in accordance with Standard Paragraph E at the end of this notice.

3. New England Power Co.

[Docket No. ER92-600-001]

December 9, 1992.

Take notice that on November 30, 1992, New England Power Company (NEP) tendered for filing an amendment to NEP's refund compliance report submitted to the Commission on September 24, 1992 in the above-referenced docket.

Comment date: December 23, 1992, in accordance with Standard Paragraph E at the end of this notice.

4. Washington Water Power Co.

[Docket No. ER93-245-000]

December 9, 1992.

Take notice that on November 30, 1992, Washington Water Power Company (Washington) tendered for filing a Notice of Cancellation of the filing rate schedules:

Washington Water Power Company
Supplement No. 6 to Rate Schedule FERC No. 97
PacifiCorp
Supplement No. 6 to Rate Schedule FERC No. 160
Portland General Electric Company
Supplement No. 6 to Rate Schedule FERC No. 31
Puget Sound Power & Light Company
Supplement No. 7 to Rate Schedule FERC No. 65
(Supersedes Supplement No. 6)

Comment date: December 23, 1992, in accordance with Standard Paragraph E at the end of this notice.

5. Montaup Electric Co.

[Docket No. ER92-91-000]

December 9, 1992.

Take notice that on November 30, 1992, Montaup Electric Company (Montaup) in compliance with the Commission's order of September 30, 1992 filed (1) a Notice of Cancellation of a Letter Agreement between Montaup and New England Power (NEP) which expired on its own terms on October 31, 1988; (2) a Refund Report enumerating all amounts billed and refunded to the companies of the original filings in this proceeding; and (3) Amendments to 6 System-Exchange Agreements under which Montaup makes short-term daily energy sales to various utilities incorporating revised contract language to provide for current hourly and daily energy reservation charge ceiling rates for prospective transactions and also to provide that the Exchange Unit must be out-of-service or uneconomic.

Comment date: December 23, 1992, in accordance with Standard Paragraph E at the end of this notice.

6. New England Power Co.

[Docket No. ER93-14-000]

December 9, 1992.

Take notice that on November 25, 1992, New England Power Company (NEP) tendered for filing an amendment concerning the interconnection agreement with the Littleton (Mass.) Electric Light and Water Department. According to NEP, the purpose of the amendment is to ensure additional notice to the Commission should the formula rate charged Littleton change in the future.

Comment date: December 23, 1992, in accordance with Standard Paragraph E at the end of this notice.

7. Indiana Michigan Power Co.

[Docket No. ER93-195-000]

December 9, 1992.

Take notice that on November 17, 1992, Indiana Michigan Power Company (I&M) tendered for filing a Letter Agreement between I&M and Northern Indiana Public Service Company (NIPSCO), dated December 26, 1985.

Comment date: December 23, 1992, in accordance with Standard Paragraph E at the end of this notice.

8. New England Power Co.

[Docket No. ER93-1-000]

December 9, 1992.

Take notice that on November 25, 1992, New England Power Company (NEP) tendered for filing a revised tariff sheet in response to certain inquiries of Commission staff.

Comment date: December 23, 1992, in accordance with Standard Paragraph E at the end of this notice.

9. PacifiCorp

[Docket No. ER91-494-003]

December 9, 1992.

Take notice that PacifiCorp on December 1, 1992, tendered for filing, in compliance with the Commission's letter dated October 26, 1992, a compliance report showing the refunds forwarded to Western Area Power Administration (Western) for service under PacifiCorp's Rate Schedule FERC No. 262 pursuant to FERC Docket No. ER91-494-000.

Copies of this filing were furnished to Western, the Utah Public Service Commission and the Public Utility Commission of Oregon.

Comment date: December 23, 1992, in accordance with Standard Paragraph E at the end of this notice.

10. Puget Sound Power & Light Co.

[Docket No. ER93-161-000]

December 10, 1992.

Take notice that on November 30, 1992, tendered for filing an amendment to its November 17, 1992 filing in the above-referenced docket.

Comment date: December 24, 1992, in accordance with Standard Paragraph E at the end of this notice.

11. PacifiCorp

[Docket No. ER92-862-000]

December 10, 1992.

Take notice that on November 16, 1992, PacifiCorp tendered for filing an amendment to its September 28, 1992 filing in the above-referenced docket.

Comment date: December 21, 1992, in accordance with Standard Paragraph E at the end of this notice.

12. Auburndale Power Partners, Limited Partnership

[Docket No. QF93-29-000]

December 10, 1992.

On December 1, 1992, Auburndale Power Partners, Limited Partnership of 12500 Fair Lakes Circle, suite 420, Fairfax, Virginia 22033, submitted for filing an application for certification of

a facility as a qualifying cogeneration facility pursuant to § 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Polk County, near Auburndale, Florida, and will consist of a combustion turbine generator, an unfired heat recovery boiler and an extraction/condensing steam turbine generator (STG). Steam recovered from the STG will be used by Coca-Cola Foods, a division of the Coca-Cola for production and packaging of orange juice and Todhunter International, Inc. for production of alcoholic beverages. The maximum net electric power production capacity of the facility will be approximately 159 MW. The primary energy source will be natural gas. Construction of the facility is expected to commence in January of 1993.

Comment date: January 19, 1993, in accordance with Standard Paragraph E at the end of this notice.

13. Florida Power & Light Co.

[Docket No. ER93–153–000]

December 10, 1992.

Take notice that on November 16, 1992, Florida Power & Light Company (FPL) tendered for filing Revision No. 3 to Sheet No. 23 of FPL's FERC's Electric Tariff Second Revised Volume No. 1.

Comment date: December 24, 1992, in accordance with Standard Paragraph E at the end of this notice.

14. Fitchburg Gas & Electric Co.

[Docket No. ER92–88–001]

December 10, 1992.

Take notice that on November 10, 1992, Fitchburg Gas & Electric Company tendered for filing copies of its revised refund report.

Comment date: December 21, 1992, in accordance with Standard Paragraph E at the end of this notice.

15. Idaho Power Co.

[Docket No. ER92–408–001]

December 10, 1992.

Take notice that on November 9, 1992, Idaho Power Company tendered for filing its Amended Compliance Filing in the above-referenced docket.

Comment date: December 22, 1992, in accordance with Standard Paragraph E at the end of this notice.

16. Southern Company Services, Inc.

[Docket No. ER93–235–000]

December 10, 1992.

Take notice that on November 25, 1992, Southern Company Services, Inc., acting as agent for Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (Operating Companies) tendered for filing notices of cancellation for certain duplicative rate schedule designations of the Operating Companies.

Comment date: December 28, 1992, in accordance with Standard Paragraph E at the end of this notice.

17. Nevada Sun Peak Limited Partnership

[Docket No. EG93–5–000]

December 10, 1992.

Take notice that on December 7, 1992, Nevada Sun-Peak Limited Partnership ("Nevada Sun-Peak") filed an Application under section 32(a)(1) of the Public Utility Holding Company Act of 1935 ("PUHCA"), as amended by section 711 of the Energy Policy Act of 1992, seeking determination by the Commission that Nevada Sun-Peak is an exempt wholesale generator. Nevada Sun-Peak owns a 210 MW peaking facility located at the Sunrise Generating Station in Clark County, Nevada.

Comment date: December 24, 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. 92–30558 Filed 12–16–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP92–74–005]

South Georgia Natural Gas Co.; Proposed Changes to FERC Gas Tariff

December 11, 1992.

Take notice that on December 1, 1992, South Georgia Natural Gas Company (South Georgia) tendered for filing the following tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1, with a proposed effective date of December 1, 1992:

Original Sheet No. 4E
Twelfth Revised Sheet No. 30
Tenth Revised Sheet No. 31

South Georgia states that the proposed tariff sheets are being filed in order to implement a proposal for the allocation by customer of any remaining balance in South Georgia's Account No. 191 attributable to any overcollections or undercollections of gas costs. South Georgia asserts that all of South Georgia's jurisdictional sales customers have elected to convert their remaining firm sales entitlements to firm transportation on South Georgia's system. South Georgia states that as a result of the foregoing and as requested by the customers, Southern Natural Gas Company (Southern) submitted applications in Docket Nos. CP92–6–000 and CP92–311–000 requesting, among other things, orders approving abandonment of the Contract Demand Southern sells South Georgia under Southern's Rate Schedule OCD–2 and certificates of public convenience and necessity authorizing Southern to render new firm natural gas sales service to these customers. As a result of the foregoing, South Georgia asserts that it no longer has a firm sales obligation to these jurisdictional customers. Further, South Georgia submits that a method which returns or recovers any overcollections or undercollections from the customers for the periods as proposed is necessary in order to properly allocate any refunds or costs to current or departing sales customers. Specifically, South Georgia proposes to direct bill or refund, as appropriate, any remaining balance in any subaccount of South Georgia's Account No. 191.

South Georgia states that copies of the filing will be served upon all of South Georgia's customers, interested state commissions and interested parties as well as parties of record in Docket No. RP92–74–000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's

Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before December 18, 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. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92–30557 Filed 12–16–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP90–1391–003]

Southern Natural Gas Co.; Proposed Changes to FERC Gas Tariff

December 11, 1992.

Take notice that on December 3, 1992, Southern Natural Gas Company ("Southern") tendered for filing the following tariff sheets to its FERC Gas Tariff, Sixth Revised Volume No. 1, to be effective January 2, 1993:

Second Revised Sheet No. 30L
First Revised Sheet No. 30Z.06
Original Sheet No. 45.05
Original Sheet No. 45.06
Original Sheet No. 45.07
Original Sheet No. 45.08

Southern states that the revised tariff sheets governing future direct delivery connections are filed, under protest, to comply with the Federal Energy Regulatory Commission's ("Commission") November 3, 1992, order granting rehearing in *Arcadian Corporation* v. *Southern Natural Gas Company*, 61 FERC ¶ 61,183 (1992). The revised tariff sheets provide for the construction of direct delivery connections upon request when such connections are operationally and economically feasible, as set forth in the revised tariff sheets.

Southern states that copies of the filing will be served upon all of its shippers and all parties in Docket No. CP90–1391.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before December 18, 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. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92–30554 Filed 12–16–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP90–687–007]

Transcontinental Gas Pipe Line Corp.; Tariff Filing

December 11, 1992.

Take notice that Transcontinental Gas Pipe Line Corporation (TGPL) tendered for filing on December 7, 1992, Third Revised Fourth Revised Sheet No. 50 to its FERC Gas Tariff, Third Revised Volume No. 1. The proposed effective date of the revised tariff sheet is November 1, 1992.

As background to the instant filing, TGPL states that in orders issued January 17, 1991 (January 17 order) and June 11, 1991 in Docket No. CP90–687, the Commission authorized TGPL to provide bundled firm transportation service under Rate Schedule FT–NT in two phases. Phase I commenced November 1, 1991 and Phase II, which provided for an increase in the level of service, commenced November 1, 1992. Ordering Paragraph 9(b) of the January 17 order authorized initial rates for TGPL's component of the bundled Phase II rates subject to TGPL adjusting such rates to reflect the final outcome of TGPL's rate proceeding in Docket No. RP90–8.

TGPL states that the purpose of the filing is to comply with the Commission's November 30, 1992 order in Docket No. CP90–687–006, which directed TGPL to make a compliance filing to place into effect on November 1, 1992 the Phase II rates authorized by the January 17 order.

TGPL states that copies of the filing were mailed to each of its FT–NT customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before December 18, 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. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92–30556 Filed 12–16–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP92–477–001]

Transwestern Pipeline Co.; Compliance Filing

December 11, 1992.

Take notice that on December 9, 1992, Transwestern Pipeline Company (Transwestern), tendered for filing Second Revised Sheet No. 100 of Rate Schedule X–10, and Fourth Revised Sheet No. 2 to become a part of its FERC Gas Tariff, Original Volume No. 2.

Northwest states that the tariff sheets reflect cancellation of the Gas Exchange Agreement between Transwestern and GPM Gas Corporation, (successor in interest to Phillips 66 Natural Gas Company), dated September 18, 1972. Northwest notes that the above-referenced tariff sheets are being filed in compliance with Ordering Paragraph (G) of the Commission Order at Docket No. CP92–477–000 issued October 20, 1992. The proposed effective date of the tariff sheets is November 20, 1992, which is the effective date of abandonment of the exchange service between Transwestern GPM pursuant to the Stipulation and Agreement filed in CP92–477–000 and the Commission Order issued October 20, 1992.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulation 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 December 18, 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. 92–30552 Filed 12–16–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–95–000]

United Gas Pipe Line Co., Amoco Production Co.; Application

December 10, 1992.

Take notice that on December 7, 1992, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251–1478, and Amoco Production Company (Amoco), P.O. Box 3092, Houston, Texas 77253 (Applicants), filed in Docket No. CP93–95–000, a joint application pursuant to section 7(b) of the National Gas Act and Rule 207(a)(2) of the Commission's Rules of Practice and Procedure, (18 CFR 385.207(a)(2)), seeking authorization for United to abandon certain facilities which will be transferred to Amoco after the abandonment and petitioning the Commission to determine that the facilities are gathering facilities and will not be subject to Commission jurisdiction after the abandonment and transfer of the facilities to Amoco, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

United states that it would abandon and transfer to Amoco, pursuant to a Sales Agreement, certain of its facilities in the Blocker Field, Harrison County, Texas. The facilities consist of 6.73 miles of 8-inch pipeline (Field Pipeline (FPL) Nos. 11, 15 and 24) and 2.13 miles of 16-inch Transmission Pipeline (TPL) 65–2, it is stated. United indicates that the FPLs presently connect Amoco's Martin, Watson and Blankenship Central Facilities to United's TPL 65–2. Amoco would utilize the facilities to gather gas from the Watson and Blankenship Central Facility and deliver the gas to the Martin Central Facility for processing, it is stated. Amoco would construct a new pipeline to transport the processed gas from the Martin Central Facility to United's TPL 65–2, it is stated. It is indicated that United would own and operate this pipeline.

It is further indicated that Amoco would gather gas for United from the Tatum field near the Watson Central Facility.

Applicants also request an order declaring that the facilities are gathering facilities and as such are exempt from Commission jurisdiction under section 1(b) of the Natural Gas Act.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 31, 1992, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92–30553 Filed 12–16–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–45–000]

Williams Natural Gas Co.; Proposed Changes In FERC Gas Tariff

December 11, 1992.

Take notice that Williams Natural Gas Company (WNG) on December 8, 1992 tendered for filing the following tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1, to be effective January 7, 1993:

Fourth Revised Sheet No. 119
Second Revised Sheet No. 126

WNG states that the purpose of this filing is to make effective tariff sheets which unbundle gathering rates from transportation rates. That is, under these revised tariff sheets, it will be clear that a shipper taking only gathering service will pay a gathering rate and not also pay a transportation rate for its service.

WNG states that a copy of its filing was served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a 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 motions or protests should be filed on or before December 18, 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 proceedings. 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. 92–30555 Filed 12–16–92; 8:45 am]

BILLING CODE 6717–01–M

Office of Fossil Energy

[Docket No. EA–58–E]

Application to Amend Electricity Export Authorization

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of application by Detroit Edison to amend electricity export authorization.

SUMMARY: The Detroit Edison Company has filed, on behalf of itself and Consumers Power Company, an application with the Office of Fuels Programs to amend its existing authorization to export electricity to Ontario Hydro.

DATES: Comments, protests or requests to intervene must be submitted on or before January 19, 1993.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Electricity (FE–52), Office of Fuels Programs, Office of Fossil Energy, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Docket Number EA–58–E should appear clearly on the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT: Ellen Russell (Program Office) at (202) 586–9624 or Lise Courtney M. Howe (Program Attorney) at (202) 586–2900.

SUPPLEMENTARY INFORMATION: On December 4, 1992, the Detroit Edison Company (Detroit Edison) applied on

behalf of itself and Consumers Power Company (Consumers) for an amendment to their existing electricity export authorization. The existing authorization, issued by the Federal Power Commission on October 10, 1972, allows Detroit Edison and Consumers (the Michigan Companies) to export to Ontario Hydro up to 4,000,000,000 KWH of electric energy annually at a maximum rate of 2,200,000,000 volt-amperes (2,200 MVA). The application requests that DOE amend the existing authorization by waiving, for calendar year 1993, the annual energy limit while leaving the 2,200 MVA capacity limitation unchanged. A similar request for calendar year 1992 was granted by DOE on June 4, 1992.

In their application filed pursuant to section 202(e) of the Federal Power Act, 16 U.S.C. 824(e), and 18 CFR § 205.300, *et seq.*, the Michigan Companies assert that if the waiver is granted, economic energy transactions with Ontario Hydro will be scheduled to flow over the existing Detroit Edison-Ontario Hydro interconnections in such a manner so as to minimize loop flows and to avoid detriment to the other regional interconnected utilities.

The electrical systems of the Michigan Companies and Ontario Hydro presently are interconnected at four points on the U.S.-Canadian border. Each interconnection has been authorized by a Presidential permit issued under Executive Order 10485.

The Michigan Companies assert that removal of the annual energy limit is warranted because such a condition is not necessary to maintain the reliability of the U.S. electric power supply system. Instead, the Michigan Companies argue, the reliability of their transmission system depends on keeping maximum flows on the transmission facilities within their capabilities for the system conditions encountered on a continuous basis.

Procedural Matters

Any person desiring to be heard or to protest this application should file a petition to intervene or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the Rules of Practice and Procedure (18 CFR 385.211, 385.214).

Any such petitions and protests should also be filed directly with: Raymond N. Shibley/Bruce W. Neely, LeBoeuf, Lamb, Leiby & MacRae, suite 1100, 1333 New Hampshire Ave., NW., Washington, DC 20036; Raymond O. Sturdy, Jr., Senior Attorney, The Detroit Edison Company, 2000 Second Avenue–688 WCB, Detroit, MI 48226; and William M. Lange, Assistant General Counsel, Consumers Power Company, Fifth Floor, 1016 16th Street, NW., Washington, DC 20036.

Pursuant to 18 CFR 385.211, protests and comments will be considered by the DOE 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 petition to intervene under 18 CFR 385.214. Section 385.214 requires that a petition to intervene must state, to the extent known, the position taken by the petitioner and the petitioner's interest in sufficient factual detail to demonstrate either that the petitioner has a right to participate because it is a State Commission; that it has or represents an interest which may be directly affected by the outcome of the proceeding, including any interest as a consumer, customer, competitor, or security holder of a party to the proceeding; or that the petitioner's participation is in the public interest.

A final determination will be made on this application after considering all available information, including information which demonstrates whether or not the proposed action will impair the sufficiency of electric supply within the United States or impede or tend to impede the coordination in the public interest of facilities subject to the jurisdiction of the DOE.

Before an export authorization may be issued, the environmental impacts of the proposed DOE action must be evaluated pursuant to the National Environmental Policy Act of 1969 (NEPA). The NEPA compliance process is a cooperative, nonadversarial process involving members of the public, State governments, and the Federal Government. The process affords all persons interested in or potentially affected by the environmental consequences of a proposed action an opportunity to present their views, which will be considered in the preparation of the environmental documentation for the proposed action. Intervening and becoming a party to this proceeding will not create any special status for the petitioner with regard to the NEPA process. Should a public proceeding be necessary in order to comply with NEPA, notice of such activities and information on how the public can participate in those activities will be published in the **Federal Register**, local newspapers, and public libraries and/or reading rooms.

Copies of this application will be made available, upon request, for public inspection and copying at the address above from 9 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on December 7, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92–30522 Filed 12–16–92; 8:45 am]

BILLING CODE 6450–01–M

Office of Hearings and Appeals

Notice of Issuance of Decisions and Orders During the Week of November 16 Through November 20, 1992

During the week of November 16 through November 20, 1992, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

KOAT, 11/17/92, LFA–0246

KOAT, a television station, filed an Appeal from a determination issued by the Albuquerque Field Office (AFO) of the Department of Energy (DOE). The determination denied, in part, a Request for Information which KOAT submitted under the Freedom of Information Act (FOIA). KOAT requested two documents, entitled "Fiscal Year 91 Construction Plan Through Fiscal Year 97" (Plan) and "Site Development Plan Annual Summary." The AFO released redacted copies of the Plan and Summary which withheld information concerning proposed construction projects for fiscal years 1993 through 1997. Citing FOIA Exemption 5, the AFO determined that disclosure of the redacted information would disclose deliberative, predecisional material and that release of this material would not be in the public interest. In considering the Appeal, the DOE determined that most of the material was predecisional and deliberative. Consequently, the DOE found that this material was properly withheld by the AFO. However, the DOE determined that some segregable factual material was withheld along with some previously released information. This material should not have been withheld and was provided to KOAT. Consequently, the DOE granted in part the Appeal.

Westat, Inc., 11/17/92, LFA–0243

Westant, Inc. (Westat) filed an Appeal from a determination issued to it by the Office of Placement and Administration (OPA) within the Office of Headquarters Procurement Operations of the Department of Energy (DOE). In that

determination, OPA denied in part Westat's request for information under the Freedom of Information Act (FOIA). The Authorizing Official had withheld the entire winning proposal submitted by the Science Applications International Corporation (SAIC) in response to a Request for Proposal for Survey Design and Analysis Support Services for the Energy Information Administration, RFP No. DE–RP01–90E121944. Relying upon Exemption b(4) of the FOIA, the Authorizing Official stated that the winning proposal was withheld in its entirety because of its "proprietary nature." In considering the Appeal, the DOE found that the Authorizing Official had not adequately justified its application of Exemption 4 to the winning proposal. Specifically, the Authorizing Official did not adequately explain why release of any portion of the winning proposal would likely cause substantial competitive harm to SAIC. Therefore, the DOE remanded the matter so that the Authorizing Official could issue a new determination focusing on the likelihood of substantial competitive harm to SAIC.

Refund Applications

Apex Oil Co., Clark Oil & Refining Corp./Isenberg Enterprises, Al Isenberg's Super 100, Larry's Clark Super 100, 11/17/92, RF342–168, RF342–169, RF342–179

The DOE issued a Decision and Order denying, in part, an Application for Refund and granting two other Applications for Refund filed by purchasers of Clark refined petroleum products in the Apex/Clark special refund proceeding. In January 1979, Al Isenberg, owner of Isenberg Enterprises, entered into an informal sublease agreement with another dealer, Larry Rupert, owner of Larry's Clark Super 100. Both Mr. and Mrs. Isenberg and Mr. Rupert's widow applied for a refund for purchases made at the station from 1979 to January 1981. The DOE determined that because Mr. Rupert did not actually purchase Clark petroleum products during the period of Mr. Isenberg's sublease, he could not have been injured by Clark's alleged overcharges. Therefore, the DOE denied Mr. Rupert's request for a refund for the period after January 1979. The DOE granted Mr. and Mrs. Isenberg's claim as well as another claim the couple filed on behalf of another station which they leased directly from Clark. The total amount of the refund authorized in this Decision and Order is $15,755 (comprised of $11,954 in principal and $3,801 in interest).

Atlantic Richfield Company/Phillips Petroleum Company, 11/19/92, RF304–4403

The DOE issued a Decision and Order granting a refund to Phillips Petroleum Company (Phillips) in the Atlantic Richfield (ARCO) Subpart V special refund proceeding. Phillips, a reseller of ARCO products requested a refund based upon its purchases of 48,465,514 gallons of ARCO products during the consent order period. The DOE considered a showing of injury provided by Phillips and applied the three step competitive disadvantage analysis using *Platt's* average wholesale prices for the Mt. Belvieu, Texas, region. Based upon this analysis, the DOE concluded that it is appropriate for Phillips to receive a refund based on its above-market volumetric share for its purchases of propane and natural gas, and a refund equal to its full allocable share for its purchases of butane. The refund granted to Phillips equals $32,187, representing $19,696 in principal and $12,491 in accrued interest.

Murphy Oil Corp./Mason's Spur Station, 11/16/92, RF309–1425

The DOE issued a Decision and Order granting an Application for Refund filed in the Murphy Oil Corporation special refund proceeding on behalf of Mason's Spur Station, a reseller of covered Murphy petroleum products during the consent order period. The applicant supplied the required information and substantiated a claim for a refund of less than $5,000. Accordingly, its refund was granted. In pursuit of a conclusion to the nearly completed Murphy refund proceeding, the Decision and Order also established a final filing deadline for Applications for Refund from the Murphy consent order fund. The OHA will not accept applications in the Murphy refund proceeding that are postmarked after December 31, 1992.

Texaco, Inc./Gervais Brothers, Inc. Et Al., 11/19/92, RF321–10591 Et Al.

The DOE issued a Decision and Order concerning eight Applications for Refund filed in the Texaco Inc. special refund proceeding. Each of the applicants purchased indirectly from Texaco and was a reseller whose allocable share is less than $10,000. One applicant, Gervais Brothers, Inc., included in its claim gallons of motor oil purchased after the effective date of decontrol, September 1, 1976. The DOE determined that this applicant was not eligible for a refund based on these gallons because no overcharges could have occurred in sales of motor oil after that date. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $8,844 ($6,618 principal plus $2,226 interest).

Texaco Inc., Kautz Texaco, Emmett's Texaco, 11/20/92, RR321–89, RR321–98

The DOE issued a Decision and Order denying two Motions for Reconsideration in the Texaco Inc. special refund proceeding. The motions were based on purchases of Texaco products allegedly made by Kautz and Emmett's Texaco service stations. However, each of the applicants failed to provide sufficient documentation to support his claimed purchase volume. Accordingly, both Motions for Reconsideration were denied.

Texaco Inc./Southside Texaco, 11/18/92, RF321–13291

The DOE issued a Decision and Order regarding an Application for Refund filed by Southside Texaco in the Texaco Inc. special refund proceeding. Southside Texaco purchased products from Chieftain Oil Co., a Texaco consignee and petroleum jobber. Both Southside Texaco and Chieftain Oil Co. were owned by Russell M. Osborne. Mr. Osborne had previously received a refund in the Texaco proceeding based on the Texaco purchases of Chieftain Oil Co. Because Texaco products purchased by (or consigned to) one firm may be included only once in determining an applicant's refund amount, the application for Southside Texaco was denied.

Texaco, Inc./Todd's Texaco Todd's Texaco, 11/16/92, RF321–4643, RF321–19331

The DOE issued a Decision and Order concerning two Applications for Refund filed on behalf of Todd's Texaco in the Texaco Inc. special refund proceeding. On May 2, 1990, the owner of Todd's Texaco, Mrs. W.O. Todd, filed an Application for Refund on behalf of Todd's Texaco using a form provided by Energy Refunds, Inc. Subsequently, on October 19, 1992, Todd filed another Application for Refund on behalf of Todd's Texaco using a form provided by Wilson, Keller & Associates (WKA). The DOE held that since Todd had falsely certified on her WKA application that she had not previously signed and authorized the filing of another Texaco refund application, it was appropriate to deny both of the applications. Consequently, the DOE denied both of Todd's applications.

Time Oil Company/Nevada, 11/17/92, RQ334–583

The DOE issued a Decision and Order concerning the second-stage application

filed by the State of Nevada (Nevada) requesting approval of its percentage of Time Oil Company second-stage monies to fund five programs: an energy emergency awareness and gasoline price monitoring program; an alternative vehicle fuel demonstration; a state energy policy implementation plan; gasoline, aviation, and diesel fuel quality assurance testing, and the promotion of its used motor oil collection program. The DOE has previously approved similar programs. Thus, Nevada's proposal was approved. The total refund granted in this Decision and Order was $54,485 (comprised of $26,441 in principal and $28,044 in interest).

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Atlantic Richfield Company/Advance Petroleum Distributing J.S. Eledge Oil Co., Inc.	RR304–13	11/19/92
	RR304–17	
Atlantic Richfield Company/Al's Service Station et al.	RF304–13211	11/19/92
Atlantic Richfield Company/Art Goodwill's Arco Station et al.	RF304–13283	11/20/92
Atlantic Richfield Company/Heet Gas Company, Inc.	RR304–25	11/16/92
Atlantic Richfield Company/Razon Arco Service Station et al.	RF304–12976	11/20/92
Atlantic Richfield Company/ Springarden Arco et al.	RF304–3863	11/20/92
Bath Local School District et al.	RF272–81330	11/17/92
Butte County et al	RF272–86000	11/16/92
Carl F. Gerken & Sons et al.	RF272–85022	11/17/92
City of Oconto et al	RF272–83321	11/17/92
City of West Des Moines et al.	RF272–85994	11/20/92
Culpeper County et al.	RF272–85404	11/16/92
Gates Chili Central School District.	RF272–83076	11/18/92
Glendive Elementary School District #1 et al.	RF272–80858	11/17/92
Gulf Oil Corporation/ Gary's Gulf Center et al.	RF300–17005	11/20/92
Gulf Oil Corporation/ J.A. Auger & Sons, Inc. et al.	RF300–17510	11/19/92
Gulf Oil Corporation/ Johnny Rombs Gulf Service et al.	RF300–16055	11/20/92
Gulf Oil Corporation/ MJ & MJ Barbosa Gulf et al.	RF300–14610	11/18/92
Gulf Oil Corporation/ Silver Springs Outpost, Inc. et al.	RF300–13550	11/20/92
Hallmark Cards, Inc	RF272–14135	11/19/92
Hallmark Cards, Inc	RD272–14135	
Figgie International, Inc.	RF272–20153	
Figgie International, Inc.	RF272–20153	
Helmsley-Spear, Inc	RF272–13928	11/20/92
Helmsley-Spear, Inc	RD272–13928	
Marissa C.U. School District 40 et al.	RF272–87041	11/16/92
Montvale School District et al.	RF272–87101	11/18/92
Pfizer Inc.	RF272–16661	11/20/92
Pfizer Inc.	RD272–16661	
Shell Oil Company/ George A. Rossi Oil Co., Inc.	RF315–7466	11/19/92
Phillips 66 Company	RF315–8027	
Coonen Inc	RF315–8196	
Shell Oil Company/ Michael A. Roy.	RF315–333	11/20/92
Michael A. Roy	RF315–334	
Michael A. Roy	RF315–335	
Michael A. Roy	RF315–336	
Michael A. Roy	RF315–337	
Michael A. Roy	RF315–338	
Shell Oil Company/ Rocket Supply Corporation et al.	RF315–8428	11/17/92
Strasburger Enterprises, Inc./Rainbo Baking Company et al.	RF343–1	11/19/92
Texaco Inc./Glen's Texaco Service et al.	RF321–2841	11/16/92
Texaco Inc./Tony's Texaco Service et al.	RF321–16420	11/19/92
Texaco Inc./Walden's Texaco et al.	RF321–10240	11/20/92
Wes-Mor Drilling, Inc	RF272–14146	11/20/92
Wes-Mor Drilling, Inc	RF272–14146	
Cactus Drilling Company.	RF272–16665	
Cactus Drilling Company.	RD272–16665	

Dismissals

The following submissions were dismissed:

Name	Case No.
Arlington City Cab	RF272–90524
Athens Texaco Service	RF321–11484
Belmond, IA	RF272–88233
Bob's Texaco Station	RF321–19125
Boston Commuter Lines, Inc.	RF272–89103
Budget Car Wash	RF304–13236
Chesapeake Gulf	RF300–17235
Church of St. Willibrord	RF272–92538
College Square Texaco	RF321–49
Damascus Gulf	RF300–17289
Dean McVey Trucking, Inc.	RF272–89116
Dellwood Foods, Inc.	RF272–82419
Dick Hulzenga Trucking	RF272–92123
Eau Claire Coop Oil Co.	RF272–93766
Fredrick & Lorraine Meyer	RF272–93550
Hank's Service Station	RF321–7183
HFCO, Inc.	RF272–93534
Hi-Way "6" Gulf	RF300–17066
Island Aviation, Inc.	RF300–20116
Kibler W.D. Trucking Co.	RF272–86558
Parkers	RF304–3870
Piedmont Trucking Co.	RF272–89112
Portel Service Center	RF321–100
Redy Mix Konkrete	RF321–15269
RLC Trucking Company	RF272–89111
Roen Steam Ship Company	RF272–89158
Smith's Grocery and Washeteria	RF300–17151
South Summit Co. School District	RF272–87468
Stan's Shell Service	RF315–7870
Unger's Texaco #1	RF321–13625
Unger's Texaco #2	RF321–13626
Vibration Texaco Service	RF321–16534
W.T. Cooper's Texaco	RF321–10090
Whitehall School District	RF272–87311
York Lines	RF272–89102

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: December 10, 1992.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 92–30618 Filed 12–16–92; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4546–5]

Proposed Settlement; Asbestos NESHAP

AGENCY: Environmental Protection Agency.

ACTION: Notice of Proposed Settlement; Request for Public Comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, notice is hereby given of a proposed Settlement Agreement conditionally entered into by the United States Environmental Protection Agency ("EPA") on November 30, 1992, in litigation concerning the National Emission Standards for Hazardous Air Pollutants for Asbestos ("Asbestos NESHAP") (40 CFR 61.141–61.159). For a period of thirty days following the date of publication of this notice, the Agency will receive written comments relating to the settlement from persons who were not named as parties to the litigation in question. EPA or the Department of Justice is authorized under section 113(g) to withdraw its consent to the Settlement Agreement if appropriate in light of the public comments.

DATES: Written comments on the Settlement Agreement must be received by January 19, 1993.

ADDRESSES: Written comments should be sent, preferably in triplicate, to Michael Horowitz, Air and Radiation Division (LE–132A), Office of General Counsel, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 260–8883. Copies of the Settlement Agreement are available from Michael Horowitz at the same address. A copy of the settlement has been lodged with the Clerk of the United States Court of Appeals for the District of Columbia Circuit.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Ripp (703) 308–8727 at the United States Environmental Protection Agency, Office of Air Quality Planning and Standards, Stationary Source Compliance Division.

SUPPLEMENTARY INFORMATION:

In *Safe Buildings Alliance* v. *U.S. Environmental Protection Agency*, No. 91–1034 (D.C. Cir.), the petitioner seeks review of EPA's November 20, 1990 Final Rule amending the national emission standard for asbestos under section 112 of the Clean Air Act, 55 FR 48406 (Nov. 20, 1990), codified at 40 CFR Part 61. EPA and the petitioner have entered into a conditional Settlement Agreement that includes a Notice of Clarification that will be published in the Federal Register if this Settlement Agreement is made final.

Section 113(g) of the Clean Air Act (42 U.S.C. 7413(g)) requires, with exceptions not pertinent here, that EPA publish notice of settlement agreements in the **Federal Register** and provide a reasonable opportunity for public comment. EPA or the Department of Justice may withhold consent to the proposed settlement if the comments disclose facts or circumstances that indicate that such consent is inappropriate, improper, inadequate or inconsistent with the requirements of the Clean Air Act.

Dated: December 3, 1992.

Raymond B. Ludwiszewski,

Acting General Counsel.

[FR Doc. 92–30654 Filed 12–16–92; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

December 9, 1992.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, Downtown Copy Center, 1990 M Street, NW., suite 640, Washington, DC 20036, (202) 452–1422. For further information on this submission contact Judy Boley, Federal Communications Commission (202) 632–7513. Persons wishing to comment on this information collection should contact Jones Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395–4814.

OMB Number: 3060–0180

Title: Section 73.1610, Equipment Tests

Action: Extension of a currently approved collection

Respondents: Businesses or other for-profit (including small businesses)

Frequency of Response: On occasion reporting.

Estimated Annual Burden: 797 responses; 0.5 hours average burden per response; 399 hours total annual burden.

Needs and Uses: Section 73.1610 requires the permittee of a new broadcast station to notify the FCC of its plans to conduct equipment tests for the purpose of making adjustments and measurements as may be necessary to assure compliance with the terms of the construction permit and applicable engineering standards. The data are used by FCC staff to assure compliance with the terms of the construction permit and applicable engineering standards.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92–30534 Filed 12–16–92; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Coastal Barrier Improvement Act; Property Availability: Approximately 280 acres of Vacant Land near Turpin Reservoir in the Medicine Bow National Forest, approximately 18 miles south of Elk Mountain, WY

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice.

SUMMARY: Notice is hereby given that approximately 280 acres of Vacant Land located near Turpin Reservoir in the Medicine Bow National Forest in Wyoming, is affected by section 10 of the Coastal Barrier Improvement Act of 1990, as specified below.

DATES: Written Notices of Serious Interest to purchase or effect other transfer of the property may be mailed or faxed to the Federal Deposit Insurance Corporation until March 17, 1993.

ADDRESSES: All written Notices of Serious Interest must be submitted to Marcia L. Rodgers, Legal Division, Federal Deposit Insurance Corporation, 707 17th Street, suite 3000, Denver, Colorado 80202, (303) 296–4703, ext. 3766, Fax (303) 292–3959.

SUPPLEMENTARY INFORMATION: The property is more fully described as three tracts of vacant land comprising 280 acres near Turpin Reservoir within the Medicine Bow National Forest, approximately 18 miles south of Elk Mountain, Wyoming. Two of the tracts are on the west side of Turpin Reservoir; these tracts consist of one rectangular 120-acre tract running east and west, and a contiguous 40-acre square tract which touches the larger parcel at its northwest corner. The third tract is on the east side of the reservoir and consists of a 120-acre rectangular tract running north and south. This tract borders the reservoir when the reservoir is full. The property has no structural improvements or utilities and consists primarily of lodgepole pine forest. Elevations range from approximately 9450 to 9700 feet above sea level; the eastern parcel rises steeply from the reservoir. County Road FR100 runs north and south through the eastern portion of the larger western parcel; the eastern parcel is accessed from a two-track road off County Road FR100. Access to the property is limited during the winter months due to elevation and contour. The property is zoned for ranching, agricultural and mining use and is subject to Carbon County Zoning Regulations which restrict permitted uses in such zoned areas.

Written notice of serious interest to purchase the property must be received on or before March 17, 1993 by Marcia Rodgers at the above address and in substantially the following form:

NOTICE OF SERIOUS INTEREST

RE: Vacant Land (280 Acres), near Turpin Reservoir in the Medicine Bow National Forest, approximately 18 miles south of Elk Mountain, Wyoming.

This Notice of Serious Interest is tendered in accordance with section 10 of the Coastal Barrier Improvement Act and publication in the **Federal Register** of a Notice of Availability on December 17, 1992 with respect to that property south of Elk Mountain, Wyoming in the Medicine Bow National Forest

consisting of three tracts of vacant land comprising 280 acres.

The (*Name and Address of the Agency of Other Qualified Organization*) is eligible to submit this notice under criteria set forth in Public Law 101–591, section 10(b)(2).

The (*Name of the Agency of Other Qualified Organization*) intends to use this property primarily for wildlife refuge, sanctuary, open space, recreational, historical, cultural or natural resource conservation purposes.

The proposed terms of purchase or transfer are as follows:

[INSERT TERMS OF PURCHASE]

Dated: December 11, 1992.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary

[FR Doc. 92–30637 Filed 12–16–92; 8:45 am]

BILLING CODE 6714–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed; The Board of Trustees of the Galveston Wharves; et al.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–004177–008.

Title: Port of Seattle/Stevedoring Services of America Terminal Agreement.

Parties:

Port of Seattle ("Port"), Stevedoring Services of America dba, Seattle International Terminal, Inc.

Synopsis: This modification adjusts the port's rental hour billing breakpoints for container cranes.

Agreement No.: 224–200707.

Title: Port of Galveston/Galvco Bridge Terminal Agreement.

Parties:

The Board of Trustees of the Galveston Wharves ("Port"), Galvco Bridge, Ltd. ("Galvco").

Synopsis: The Agreement permits the Port to lease to Galvco certain facilities for the development and operation of a railbridge operation and sufficient water area for the operation of the railbridge as well as dolphins and winches. The Agreement has an initial term of three years.

Dated: December 14, 1992.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 92–30608 Filed 12–16–92; 8:45 am]

BILLING CODE 6730–01–M

[Docket No. 90–23]

Notice of Inquiry on Ocean Freight Tariffs in Foreign and Domestic Offshore Commerce; Automated Tariff Filing and Information System ["ATFI"], Supplemental Report No. 3 and Notice

By its previous Supplemental Report and Notice ("Supplemental Report No. 2"), issued on August 12, 1992, the Federal Maritime Commission ("Commission") established a phase-in (by trade area) schedule for the filing of tariff data into the Automated Tariff Filing and Information System ("ATFI"). However, given the need for upgrades to computer hardware and software, including those enhancements suggested by industry comments, the Commission's Contractor indicates that the earliest possible date that the electronic system can accept final tariff data is February 22, 1992. Accordingly the phase-in schedule is revised to read as set forth below (all dates are in 1993). [All tariffs not converted by the "complete" date are subject to cancellation by order of the Commission in a show-cause proceeding, unless temporarily exempted.]

Trade area	Begin	Complete
[Voluntary (early) filing of ANY tariff after February 21]		
A. Worldwide/Asian & South Pacific	February 22	June 4.
B. European	June 14	August 27.
C. Africa/Mid East	September 13	September 24.
D. North American/Caribbean	September 29	October 8.
E. Central/South America	October 11	November 12.
F. Terminals/Domestic Trades	November 22	December 31.
G. New Essential Terms		November 22

Filers must notify the ATFI Hot Line at 703–883–8350 ten (10) days before beginning to convert a full tariff under the above schedule. Also, contact the Hot Line with any questions.

Explanation of Conversion Schedule

• *Voluntary (early) filing of tariffs.* Filers may convert any tariffs earlier than required in the mandatory schedules, and maintain them from that time forward.

A. *Worldwide, Asian, and/or South Pacific:* Tariffs applicable to/from worldwide points; tariffs applicable to/from countries and islands bordering the Pacific or Indian Oceans, which are wholly or partially north of the Equator, and wholly east of 90 degrees East longitude, including all of the People's Republic of China, Mongolia, and that portion of the former Russian Soviet Federated Socialist Republic east of 90 degrees East longitude; and/or tariffs applicable to/from countries and islands bordering the pacific or Indian Oceans and which are wholly south of the Equator.

B. *European:* Tariffs applicable to/from the European continent, including the islands adjacent thereto, the countries bordering the Atlantic Ocean, the northern coast of the Mediterranean Sea, Turkey, and that portion of the former Russian Soviet Federated Socialist Republic west of 90 degrees East longitude.

C. *Africa and/or Mid East:* Tariffs applicable to/from the African continent, including the islands adjacent thereto; and/or those countries not included in the "European Area"

which: border the Mediterranean Sea, and/or are wholly or partially west of 90 degrees East longitude.

D. *North America and/or Caribbean:* Tariffs applicable to/from the North American continent, not described in the "Domestic" trade areas herein; and/or points and places bordering the Caribbean Sea including Mexico but excluding Central and South America.

E. *Central and/or South America:* Tariffs applicable to/from countries and islands adjacent thereto, in Central and/or South America not included in other trade areas herein.

F. *Terminals and/or Domestic:* All marine terminal operator tariffs; and/or all tariffs for any part of the Domestic Offshore Trade under the Commission's jurisdiction.

G. *New Essential Terms:* The essential terms of all service contracts executed on or after the "Begin" date must be properly filed in the electronic ATFI system, or be subject to rejection or cancellation.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 92-30607 Filed 12-16-92; 8:45 am]

BILLING CODE 6730-01-M

Automated Tariff Filing and Information System (ATFI); Revised Phase-In Schedule

On November 2, 1992, Public Law 102-582 ("P.L. 102-582") was signed by the President. Section 502(b)(1) of P.L. 102-582 provides in pertinent part:

(b) Tariff Form and Availability.—

(1) Requirement to File.—Notwithstanding any other law, each common carrier and conference shall, in accordance with subsection (c), file electronically with the Commission all tariffs, and all essential terms of service contracts, required to be filed by that common carrier or conference under the Shipping Act of 1984 (46 App. U.S.C. 1701 *et seq.*), the Shipping Act, 1916 (46 App. U.S.C. 801 *et seq.*), and the Intercoastal Shipping Act, 1933 (46 App. U.S.C. 843 *et seq.*).

* * * * *

(c) Filing Schedule.—New tariffs and new essential terms of service contracts shall be filed electronically not later than July 1, 1992. All other tariffs, amendments to tariffs, and essential terms of service contracts shall be filed not later than September 1, 1992.

Notwithstanding the language of the statute, February 22, 1993, is the earliest possible date the Federal Maritime Commission ("Commission") will be prepared to accept electronically filed tariff data. In Supplemental Report No. 3 and Notice ("Supplemental Report No. 3") in Docket No. 90-23, Automated Tariff Filing and Information System (ATFI), the Commission today has published a revised phase-in schedule for the mandatory electronic filing/conversion of tariff data into ATFI. That schedule establishes, according to specified trade areas, the dates during 1993 by which carriers and conferences must convert and file their tariffs electronically. As indicated in that Report, paper tariffs covering the described trade areas which are not converted by the prescribed "complete" date, will be subject to cancellation by order of the Commission in a show cause proceeding. As additionally indicated in that Report, filers must notify the ATFI Hot Line at (703) 883-8350 ten (10) days before beginning to convert a full tariff.

Other matters involving the implementation of Public Law 102-582 will be addressed separately.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 92-30606 Filed 12-16-92; 8:45 am]

BILLING CODE 6730-01-M

GENERAL SERVICES ADMINISTRATION

Office of Business, Industry, and Governmental Affairs; Business Advisory Board

Meeting Notice: Notice is hereby given that the General Services Administration (GSA) Business Advisory Board will meet January 12, 1993, from 10 a.m. to 4 p.m. at GSA's Central Office, 18th and F Streets, NW., Room 5141A, Washington, DC. Notice is required by the Federal Advisory Committee Act, 5 U.S.C. App. 2, and the implementing regulation, 41 CFR part 101-6.

The purpose of the meeting is to provide a forum for discussion on key business and industry trends, emerging technologies and products, and other issues that may affect GSA's future policy and program formulation. The agenda for this meeting will include discussion on: quality vendor award program, service to the citizens, consortium on office technology, quality systems registration, and customer satisfaction measurement.

The meeting will be open to the public.

For further information, contact Patricia Jones (202/501-0838) of the Office of Business, Industry, and Governmental Affairs, GSA/AL, Washington, DC 20405.

Dated: December 3, 1992.

Donald C.J. Gray,

Associate Administrator for Business, Industry, and Governmental Affairs, GSA.

[FR Doc. 92-30622 Filed 12-16-92; 8:45 am]

BILLING CODE 6820-34-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HF (Food and Drug Administration) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (35 FR 3685, February 25, 1970, and 56 FR 29484, June 27, 1991, as amended most recently in pertinent part at 54 FR 9252, March 6, 1989) is amended to reflect an organization change in the Food and Drug Administration (FDA).

FDA proposes to transfer the congressional and public affairs functions from the Office of Compliance within the Center for Biologics Evaluation and Research (CBER) to the Office of the Center Director, CBER to increase the accessibility of these support activities to all Center employees. The congressional and public affairs functions which include FOI requests, legislative correspondence, and professional and consumer affairs will therefore be deleted from the Office of Compliance.

Under Section HF-B, Organization:

1. Delete subparagraph (p-2) Office of Compliance (HFBC) in its entirety and insert a new subparagraph (p-2) reading as follows:

Office of Compliance (HFBC). Monitors the quality of marketed biological products through surveillance, inspections, report evaluation and compliance programs, and coordinates testing of marketed products with other components of FDA.

Advises the Center Director and other Agency officials on FDA's regulatory compliance responsibilities for biological products.

Directs and coordinates Center regulation writing activities.

Directs the Headquarters biologics inspection program and assists in training of Headquarters and field inspectors of biological products based on guidance from the curriculum committee.

Develops compliance standards for biological product industry practices,

including Current Good Manufacturing Practice (CGMP) regulations, and ensures their uniform interpretation.

Directs the Center's bioresearch monitoring program, enforcement, and recall programs for biological products.

Identifies problems in biological product regulation, manufacturing, and quality assurance and proposes solutions to these problems.

Develops biological product quality assurance compliance and surveillance programs, coordinates and directs field implementation, and advises other Center components on these programs.

Provides guidance to Headquarters and field personnel in the development of evidence to support enforcement actions for deviation from the applicable standards.

Serves as the focal point within the Center for surveillance and enforcement policy development.

Evaluates, in coordination with appropriate Agency officials, a firm's conformance with CGMP in producing biological products for procurement by Federal and State agencies.

Coordinates all Center-field compliance activities, including planning activities and field assignments, with the exception of consumer affairs activities.

Coordinates the Center's export program and serves as the Center's focal point for import issues.

Dated: December 8, 1992.

David A. Kessler,

Commissioner of Food and Drugs.

[FR Doc. 92–30640 Filed 12–16–92; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–060–03–4120–01]

Moab District Advisory Council; Call for Nominations

December 10, 1992.

AGENCY: Bureau of Land Management, Moab District, Utah.

ACTION: Moab District Advisory Council, call for nominations.

SUMMARY: BLM's district advisory councils (DACs) are mandated by section 309(a) of the Federal Land Policy and Management Act of 1976, as amended by section 13 of the Public Rangelands Improvement Act of 1978, 43 U.S.C. 1739. Under our governing regulations, 43 CFR 1784.6–4(a), an advisory council must be established for each BLM district.

The purpose of this notice is to solicit public nominations to fill 1 position on the Bureau of Land Management's (BLM) Moab District Advisory Council.

Nominations are needed for the elected official position to fill an unexpired term through December 31, 1993. To qualify, nominees must be an incumbent elected official of general purpose government serving the people of the Moab District.

The purpose of the Council is to provide informed advice to the BLM Moab District Manager on the management of the public lands in the Moab District. Members will serve without salary, but will be reimbursed for travel and per diem expenses at current rates for Government employees.

The council normally will meet at least twice annually. Additional meetings may be called by the District Manager or his designee in connection with special needs for advice.

Persons wishing to nominate individuals or to be nominated to serve on the Council should contact the District Manager at the address below. They should then provide the District Manager with the names, addresses, occupations, and other relevant biographical information of qualified nominees.

DATES: All nominations should be received on or before January 19, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Roger Zortman, District Manager, P.O. Box 970, Moab, Utah 84532 (801) 259–6111.

Roger Zortman,

District Manager.

[FR Doc. 92–30603 Filed 12–16–92; 8:45 am]

BILLING CODE 4310–DQ–M

[ES–940–5700–10–241A]

General Land Office Automated Records Project

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: Notice is given that the public availability of the Bureau of Land Management (BLM) General Land Office (GLO) Automated Records Project will be delayed until February 1, 1993, due to technical difficulties. This Project has optically scanned images of the original GLO patents and deeds and contains a data base of key information derived from the patents.

DATES: February 1, 1993.

ADDRESSES: The GLO Automated Records Project system is available and supported from 8 a.m. to 5 p.m., Monday through Friday (excluding holidays) at the following location: Bureau of Land Management, Eastern States, Public Service Section, 7450 Boston Boulevard, Springfield, Virginia 22153.

SUPPLEMENTARY INFORMATION: The BLM Eastern States maintains the original GLO tract books that show how, when, and to whom title to public domain lands passed from the United States—in the States of Alabama, Arkansas, Florida, Illinois, Indiana, Iowa, Louisiana, Michigan, Minnesota, Missouri, Mississippi, Ohio, and Wisconsin. The tract books record land transactions that date back to the late 1700's. Eastern States also maintains a complete set of field notes and township plats for the 13 States listed above.

The BLM initiated the GLO Automated Records Project because it recognized the need to protect and preserve these records, and make them more accessible. The Project provides the capability to scan, index, store, update, and retrieve images and attribute data for the images of the GLO documents. To protect them from further deterioration, the original documents are retired from daily public use after entry into the GLO Automated Records System.

Retrieval of the data base and document images from optical disk is now available for the States of Florida, Arkansas, Wisconsin, Louisiana, Minnesota, and Michigan, for patents issued for cash entries and homesteads before July 1, 1908. Document images can be retrieved by querying the data base in six areas: legal land description, patent authority, patentee name, land office, certificate number, and county. As they are completed, the rest of the states and the field notes and township plats will come "on-line."

Paper copies of the document images are available in several sizes. Also available are reports with information specific to the document (land description, patent authority, patentee name, land office, certificate number, and county).

Until April 1, 1993, there will be no charge for using the GLO Automated Records System, although there will be the standard charge for paper copies of documents and reports. After April 1, 1993, rates will be charged for querying the System. The rates will follow established BLM cost recovery guidelines.

The GLO Automated Records System will be available for remote use (via modem) 24 hours daily and supported during the hours of 8 a.m. and 5 p.m., Monday through Friday (excluding holidays), in the Eastern States Public Service Section as of April 1, 1993.

FOR FURTHER INFORMATION CONTACT: The Public Service Section at 703–440–1600.

Dated: December 9, 1992.

Larry E. Hamilton,

Acting State Director.

[FR Doc. 92–30600 Filed 12–16–92; 8:45 am]

BILLING CODE 4310–GJ–M

[CO–920–93–4110–03; COC41333]

Colorado; Proposed Reinstatement of Terminated Oil and Gas Lease

Under the provisions of Public Law 97–451, a petition for reinstatement of oil and gas lease COC41333, Rio Blanco County, Colorado, was timely filed and was accompanied by all required rentals and royalties accruing from September 1, 1992, the date of termination.

No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $5 per acre and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee for the lease and has reimbursed the Bureau of Land Management for the cost of this **Federal Register** notice.

Having met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920, as amended, (30 U.S.C. 1888 (d) and (e), the Bureau of Land Management is proposing to reinstate the lease effective September 1, 1992, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Questions concerning this notice may be directed to Joan Gilbert of the Colorado State Office at (303) 239–3783.

Dated: November 11, 1992.

Janet M. Budzilek,

Chief, Fluid Minerals Adjudication Section.

[FR Doc. 92–30597 Filed 12–16–92; 8:45 am]

BILLING CODE 4310–JB–M

[MT–0210–4210–04; MTM 80345]

Realty Action; Exchange of Public Lands and Minerals in Musselshell and Yellowstone Counties, MT

AGENCY: Bureau of Land Management, Miles City District Office, Montana, Interior.

ACTION: Designation of pubic surface estate lands and federal coal mineral estate in Musselshell County, Montana for transfer out of federal ownership in exchange for lands owned by the Meridian Minerals Company (Meridian) in Yellowstone County, Montana.

SUMMARY: A proposal has been received from Meridian to acquire public surface estate and coal estate from the BLM to complete its planned surface construction activities related to the Bull Mountains mine support infrastructure. Meridian agrees not to surface mine the federal coal it proposes to acquire and underground mining of the coal is not feasible. The surface estate and the entire underlying mineral estate to be acquired by the BLM is located in an area known as the South Hills located approximately three miles south of Billings, Montana. The acquired lands will connect two larger parcels of public land aggregating approximately 1,200 acres. Acquisition of this parcel would aid the management and recreational use of the area including uses such as for motocross, horseback riding, hiking, bicycling, jogging and wildlife viewing. The following surface and coal estate is being considered for disposal and acquisition by land and mineral exchange pursuant to Section 206 of the Federal Land Policy and Management Act of October 21, 1976, 43 U.S.C. 1716.

Principal Meridian, Montana

Selected Public Surface to be Acquired by Meridian in Musselshell County

T. 6 N., R. 26 E.,
Section 12, lot 4, W1/2SW, SESW
Consisting of 153.96 acres.

Selected Federal Coal to be Acquired by Meridian in Musselshell County

T. 6 N., R. 26 E.,
Section 4, all
Section 12, all
Consisting of 1257.55 acres of coal.

Offered Surface and Mineral Estate to be Acquired by BLM in Yellowstone County

T. 1 S., R. 26 E.,
Section 23, NESW, N1/2SE, SESE
Consisting of 160.00 acres.

The surface and mineral estates described above and designated for disposal are segregated from entry under the mining laws but not the mineral leasing laws and not from exchange pursuant to section 206 of the Federal Policy and Management Act of 1976, effective upon publication of this notice in the **Federal Register**. The segregative effect on the selected public lands and minerals designated for disposal will terminate upon issuance of a patent to Meridian or two years from this publication, whichever occurs first.

Comments and information related to this proposed exchange will be accepted at an open house scheduled at 5 p.m. on Wednesday, January 27, 1993 at the Montana Power Company offices, 202 Main, Roundup, Montana.

Final determination on disposal will await completion of an environmental assessment. Upon completion of an environmental assessment and land use decision, a Notice of Realty Action will be published specifying the lands to be exchanged.

DATES: Comments will be accepted until February 1, 1993.

ADDRESSES: Interested parties may submit comments related to the public interest of this exchange to the Billings Resource Area office, 810 East Main, Billings, Montana 59105.

FOR FURTHER INFORMATION CONTACT: Jim Hetzer, Bureau of Land Management, Miles City District Office, P.O. Box 940, Miles City, MT, 59301, 406–232–4331.

SUPPLEMENTARY INFORMATION: Detailed information concerning the exchange is available at the Billings Resource Area office, 810 East Main, Billings, MT 59105.

Sandra E. Sacher,

Associate District Manager.

[FR Doc. 92–30609 Filed 12–16–92; 8:45 am]

BILLING CODE 4310–DN–M

[CO–070–03–7122–02–7410; C–50893]

Intent To Consider Amendment of the Grand Junction Resource Area Resource Management Plan, 1987

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of Intent to consider Amendment of the Grand Junction Resource Area Resource Management Plan, 1987, to address a proposed Withdrawal of public lands from mineral location and entry, and Notice of Public Comment Period to identify issues to be addressed in an Environmental Assessment on the proposed Amendment.

SUMMARY: Pursuant to section 102 of the National Environmental Policy Act of 1969, and sections 202 and 204 of the Federal Land Policy and Management Act of 1976, the Bureau of Land Management, Grand Junction Resource Area, will consider an amendment of the Grand Junction Resource Area Resource Management Plan, 1987, and will prepare an Environmental Assessment on the proposed Amendment.

SUPPLEMENTARY INFORMATION: The Plan Amendment and Environmental Assessment are being developed to consider a proposal by the U.S. Department of Transportation, Federal Aviation Administration, to withdraw from mineral location and entry the

following public lands comprising approximately 2,163.46 acres for 20 years.

Ute Principal Meridian, Colorado

T. 1 N., R. 1 E.
Sec. 19, Lots 1 thru 4, E½W½, SE¼;
Sec. 20, S½SW¼;
Sec. 29, N½, N½SE¼, SE¼SE¼;
Sec. 30, Lot 1, NE¼, NE¼NW¼;
Sec. 32, NE¼NE¼.
T. 1 N., R. 1 W.
Sec. 13, N½SW¼, SW¼SW¼, S½SE¼;
Sec. 14, SE¼;
Sec. 23, NE¼, N½NW¼;
Sec. 24, NE¼, N½SE¼, SE¼SE¼.

This withdrawal would protect land adjacent to Walker Field Airport in Grand Junction, Colorado, in the interest of future airport development. The land would continue to be managed by the Bureau of Land Management. Written comments on the proposal will be accepted until January 19, 1993, at the address listed below. The purpose of the public comment period is to identify issues and accept comments, suggestions or objections on the proposed mineral withdrawal. An Environmental Assessment will be prepared to evaluate the issues raised during the amendment process. A Decision Record will be issued with the Environmental Assessment to document the proposed decision concerning the proposed Plan Amendment and Withdrawal following the public comment period.

FOR FURTHER INFORMATION: Additional information concerning this proposed Mineral Withdrawal and Amendment of the Grand Junction Resource Area Resource Management Plan, 1987, is available for review in the Bureau of Land Management, Grand Junction Resource Area Office, 2815 H Road, Grand Junction, Colorado 81506, or by contacting Robin Buchanan, Realty Specialist, at (303) 244–3028.

Richard Arcand,

Acting District Manager.

[FR Doc. 92–30599 Filed 12–16–92; 8:45 am]

BILLING CODE 4310–JB–M

[ID–942–03–4730–02]

Idaho: Filing of Plats of Survey; ID

The plat of survey of the following described land was officially filed in the Idaho States Office, Bureau of Land Management, Boise, Idaho, effective 9 a.m., December 10, 1992.

The plat representing the dependent resurvey of portions of the subdivisional lines and the 1961–1968 adjustment of the 1878 meander lines of the right and left banks of the Snake River, subdivision of section 14, and the survey of portions of the 1991 meander lines of the right and left banks of the Snake River, Township 4 North, Range 37 East, Boise Meridian, Idaho, Group No. 816, was accepted December 8, 1992.

This survey was executed to meet certain administrative needs of this Bureau.

All inquiries concerning the survey of the above-described land must be sent to the Chief, Branch of Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706.

Dated: December 10, 1992.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 92–30605 Filed 12–16–92; 8:45 am]

BILLING CODE 4310–66–M

[UT–942–4210–06; U–0113225]

Proposed Continuation of Withdrawal; UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Army Corps of Engineers proposes that a 1619.24-acre withdrawal for the White Sands Missile Range, Green River Launch Site continue for 20 years. The land would remain closed to surface entry and mining, but would be opened to mineral leasing.

DATES: Comments should be received by March 17, 1993.

ADDRESS: Comments should be sent to State Director, Utah State Office, P.O. Box 45155, Salt Lake City, Utah 84145–0155.

FOR FURTHER INFORMATION CONTACT: Randy Massey, BLM Utah State Office, (801) 539–4119.

SUPPLEMENTARY INFORMATION: The Corps of Engineers proposes that the existing land withdrawal made by Public Land Order 3279, dated December 7, 1963 be continued for 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The land is described as follows:

Salt Lake Meridian

T. 21 S., R. 16 E.,
Sec. 13, S½SW¼;
Sec. 14, SE¼SE¼;
Sec. 22, S½NE¼;
Sec. 23, NW¼NW¼, S½NW¼, NE¼ NE¼;
Sec. 24, NE¼;
T. 21 S., R. 17 E.,
Sec. 19, lots 2–4 incl., E½SW¼;
Sec. 29, S½NW¼, SW¼, W½SE¼;
Sec. 30, lot 3, N½NE¼, E½SW¼, S½ SE¼;
Sec. 31, NE¼, NE¼NW¼, N½SW¼, SE¼ SE¼.

The areas described aggregate 1619.24 acres in Grand County.

The purpose of the withdrawal is to protect the Green River Launch Site, White Sands Missile Range, near Green River, Utah. The withdrawal presently segregates the land from settlement, sale, location, and entry, including location and entry under the mining laws, and also the mineral leasing laws. The site is proposed to be opened to mineral leasing.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the Chief, Branch of Lands and Minerals Operations, Utah State Office.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued, and, if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

Ted Stephenson,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 92–30546 Filed 12–16–92; 8:45 am]

BILLING CODE 4310–DQ–M

National Park Service

Delaware Water Gap National Recreation Area; Meeting

AGENCY: National Park Service; Delaware Water Gap National Recreation Area Citizens Advisory Commission.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the date for the next three meetings of the Delaware Water Gap National Recreation Area Citizens Advisory Commission. Notice of said meetings is required under the Federal Advisory Committee Act.

Date: January 16, 1993.
Time: 9 a.m.
Location: New Jersey District Office, Delaware Water Gap NRA, Walpack, New Jersey.

Snow Date: January 23, 1993.

Date: February 20, 1993.

Time: 9 a.m.

Location: Bushkill School Office, Delaware Water Gap NRA, Bushkill, PA.

Snow Date: February 27, 1993.

Date: March 27, 1993.

Time: 9 a.m.

Location: Millbrook Church, Intersection Old Mine Rd. and Route 602, Millbrook Village, NJ.

Agenda: The agenda will be devoted to committee reports, Superintendent's report, old business, new business, correspondence, identification of topics of concern. Opportunities for public comment to the Commission will be provided.

FOR FURTHER INFORMATION CONTACT: Hal J. Grovert, Acting Superintendent; Delaware Water Gap National Recreation Area, Bushkill, PA 18324; (717) 588–2435.

SUPPLEMENTARY INFORMATION: The Delaware Water Gap National Recreation Area Citizens Advisory Commission was established by Public Law 100–573 to advise the Secretary of the Interior and the United States Congress on matters pertaining to the management and operation of the Delaware Water Gap National Recreation Area, as well as on other matters affecting the Recreation Area and its surrounding communities.

The meeting will be open to the public. Any member of the public may file with the Commission a written statement concerning agenda items. The statement should be addressed to The Delaware Water Gap National Recreation Area Citizens Advisory Commission, P.O. Box 284, Bushkill, PA 18324. Minutes of the meeting will be available for inspection four weeks after the meeting at the permanent headquarters of the Delaware Water Gap National Recreation Area located on River Road 1 mile east of U.S. Route 209, Bushkill, Pennsylvania.

Charles P. Clapper, Jr.,

Acting Regional Director, Mid-Atlantic Region.

[FR Doc. 92–30495 Filed 12–16–92; 8:45 am]

BILLING CODE 4311–70–M

Upper Delaware Scenic and Recreational River; Meetings

AGENCY: National Park Service; Upper Delaware Citizens Advisory Council.

ACTION: Notice of change of meeting date.

SUMMARY: This notice sets the schedule for calendar year 1993 meetings of the Upper Delaware Citizens Advisory Council, as required under the Federal Advisory Committee Act.

Date: November 12, 1992.

Type of Meeting: Plenary and informational meetings.

Address: Town of Tusten Hall, Bridge Street, Narrowsburg, New York.

Dates	Type of meeting	Inclement weather reschedule date
February 26, 1993.	Business	March 12, 1993
March 26, 1993	Informational .	April 16, 1993
April 23, 1993 ...	Business	May 14, 1993
May 21, 1993 ...	Informational .	
June 25, 1993 ..	Business	
July 10, 1993	Educational Forum.	
August 27, 1993	Business	
October 2, 1993	Educational Forum.	
October 29, 1993.	Business	
November 19, 1993.	Informational .	December 10, 1993
December 17, 1993.	Business	January 14, 1994

Press releases containing specific information regarding the subject of the monthly meeting will be published in the following area newspapers: The Sullivan County Democrat, The Times Herald Record, The River Reporter, The Tri-state Gazette, The Pike County Dispatch, The Wayne Independent, The Hawley News Eagle, The Weekly Almanac.

FOR FURTHER INFORMATION CONTACT: John T. Hutzky, Superintendent; Upper Delaware Scenic and Recreational River, P.O. Box C, Narrowsburg, New York 12764–0159; (717) 729–8251.

SUPPLEMENTARY INFORMATION: The Advisory Council was established under section 704(f) of the National Parks and Recreation Act of 1978, Public Law 95–625, 16 U.S.C. 1724 note, to encourage maximum public involvement in the development and implementation of the plans and programs authorized by the Act. The Council is to meet and report to the Delaware River Basin Commission, the Secretary of the Interior, and the Governors of New York and Pennsylvania in the preparation and implementation of the management plan, and on programs which relate to land and water use in the Upper Delaware Region.

All meetings are open to the public. Any member of the public may file with the Council a written statement concerning agenda items. The statement should be addressed to the Upper Delaware Citizens Advisory Council, P.O. Box 84, Narrowsburg, New York 12764. Minutes of the meeting will be available for inspection four weeks after the meeting, at the permanent headquarters of the Upper Delaware Scenic and Recreational River, River Road, 1¾ miles north of Narrowsburg, New York; Damascus Township, Pennsylvania.

Charles P. Clapper, Jr.,

Acting Regional Director, Mid-Atlantic Region.

[FR Doc. 92–30496 Filed 12–16–92; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

Release of Waybill Data

The Commission has received a requests from the Association of American Railroads (AAR), Economics and Finance Department for permission to use certain data from the 1991 ICC Waybill Sample.

A copy of the request (WB027—12/2/92) may be obtained from the ICC Office of Economics.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to this request, they should file their objections (an original and 2 copies) with the Director of the Commission's Office of Economics within 14 calendar days of the date of this notice. The rules for release of waybill data [Ex Parte 385 (Sub-No. 2)] are codified at 49 CFR 1244.8.

CONTACT: James A. Nash, (202) 927–6196.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–30660 Filed 12–16–92; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket Nos. 28905 (Sub-No. 22); 29430 (Sub-No. 20)]

CSX Corp., Control, Chessie System, Inc. and Seaboard Coast Line Industries, Inc.; Norfolk Southern Corp. Control, Norfolk and Western Railway Co. and Southern Railway Co. (Arbitration Review)

AGENCY: Interstate Commerce Commission.

ACTION: Notice of reopening and request for comments; extension of comment due date.

SUMMARY: By decision served November 13, 1992 (57 FR 54104, November 16, 1992), the Commission sought public comment with regard to any issues in these cases that remain open for reconsideration in light of the Supreme Court's decision in *Norfolk & Western* v. *American Train Dispatchers*, ___U.S. ___111 S.Ct. 1156 (1991). By motion filed December 7, 1992, the Brotherhood of Railway Carmen (Carmen) requests a

60-day extension of the comment due date. Carmen states additional time is needed for new counsel to survey the record, relevant case law and statutes to prepare and present meaningful comments. Carmen states it has contacted interested parties and the American Train Dispatchers Association agrees to the 60-day request, but Norfolk and Western Railway Company, Southern Railway Company, and CSX Transportation, Inc., agree only to a 30-day extension. The full 60-day request is reasonable and will be granted.

DATES: Comments are due on March 1, 1993. Replies are due on April 2, 1993.

ADDRESSES: Send pleadings referring to Finance Docket Nos. 28905 (Sub-No. 22) and 29430 (Sub-No. 20) to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927–5660 [TDD for the hearing impaired: (202) 927–5721].

Decided: December 14, 1992.

By the Commission, Sidney L. Strickland, Jr., Secretary.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–30663 Filed 12–16–92; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 32201]

Southern Pacific Transportation Co.—Trackage Rights—Los Angeles County Transportation Commission; Notice of Exemption

Los Angeles County Transportation Commission (LACTC) has agreed to grant bridge and local trackage rights to Southern Pacific Transportation Company (SP) between: (1) LACTC milepost 482.05 at Alhambra Junction and LACTC milepost 414.42 at Palmdale Junction and (2) LACTC milepost 482.05 at Alhambra Junction (across the LAUPT Bridge) and LACTC milepost 482.30, a total distance of about 68.03 miles [1] in Los Angeles County, California. The exemption became effective on December 14, 1992. The parties state their intent to consummate the transaction on or after consummation of the transaction involved in Finance Docket No. 32199, Los Angeles County Transportation Commission—Acquisition Exemption—Southern Pacific Transportation Company.[2]

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Karl Morell, Taylor, Morell & Gitomer, Suite 210, 919 18th Street, NW., Washington, DC 20006.

As a condition to the use of this exemption, any employees adversely affected by the trackage rights will be protected pursuant to Norfolk and Western R. Co.—Trackage Rights—BN, 354 I.C.C. 605 (1978), as modified in Mendocino Coast Ry., Inc.—Lease and Operate, 360, I.C.C. 653 (1980).

Date: December 11, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–30661 Filed 12–16–92; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research Act of 1984—Network Management Forum

Notice is hereby given that, on October 27, 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") 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: Network Managers (UK) Limited, Guilford, Surrey, England is a Corporate Member; GTE Federal Systems Division (formerly Contel), Chantilly, VA; Linx, N.M.S., Ltd., Crownhill, Milton Keynes, England; Netcomm Limited, Basildon, Essex, England; and Opening Technologies, McLean, VA are Associate Members; and Midland Bank, Sheffield, England, and U.S. Department of State (DTS–PO), Springfield, 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 August 10, 1992. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on October 8, 1992 (57 FR 46409).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 92–30615 Filed 12–16–92; 8:45 am]

BILLING CODE 4410–01–M

National Cooperative Research; Smart House project

Notice is hereby given that, on October 5, 1992, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Smart House, L.P., has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in membership of the Smart House Project ("the Project"). 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.

The following parties are now participating in the Project: The American Institute of Architecture Students, Washington, DC; Ameritech Services, Inc., Cleveland, OH; Bose Corporation, Framingham, MA; H–P Products, Louisville, OH; Westinghouse Electric Corporation, Linthicum, MD. The following change has been made in the membership of the Project: The Southern Company has replaced its subsidiary Georgia Power Company as a participant in the venture and will be representing itself and its subsidiaries (including Georgia Power Company, Alabama Power Company, Gulf Power

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[1] The milepost do not total because of a change of milepost in the middle of the LAUPT bridge.

[2] By decision served December 15, 1992 in Finance Docket No. 32199, LACTC became a common carrier subject to the jurisdiction of the Interstate Commerce Commission (replacing SP as a common carrier) as to the trackage involved in this Finance Docket No. 32201. However, LACTC and SP dispute our jurisdiction over the transaction involved in Finance Docket No. 32199 and may subsequently petition to reopen that proceeding and dismiss it for lack of jurisdiction. If this is done, SP will no longer need a grant of trackage rights to be able to operate over the property involved in this Finance Docket No. 32201, and the parties will petition to reopen and dismiss the trackage rights involved herein.

Company, Savannah Electric & Power Company, and Mississippi Power Company). The following party is no longer involved in the Project: Polk Audio.

No other changes have been made in either the membership or planned activity of the Project. Participants of the Project are developing a coordinated home control and energy distribution system containing integral telecommunications and advanced safety features.

On June 14, 1985, the predecessor in interest to Smart House, L.P., 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 October 10, 1985 (50 FR 41428).

The last notifications was filed with the Department on July 1, 1992. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on July 29, 1992 (57 FR 33524).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 92–30616 Filed 12–16–92; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Office of the Secretary

All Items Consumer Price Index for All Urban Consumers; United States City Average

Pursuant to the requirements of Public Law 95–602, I hereby certify that the Consumer Price Index for All Urban Consumers rose by 3.2 percent between October 1991 and October 1992 from a level of 137.4 (1982–84=100) in October 1991 to a level of 141.8 (1982–84=100) in October 1992.

Signed at Washington, DC, on the 9th day of December 1992.

Lynn Martin,

Secretary of Labor.

[FR Doc. 92–30636 Filed 12–16–92; 8:45 am]

BILLING CODE 4510–24–M

Employment and Training Administration

[TA–W–27,575, TA–W–27,575A Louisiana, TA–W–27,575B Mississippi, TA–W–27,575C Texas]

Dailey Petroleum Services, Inc., Conroe, TX and Dailey Directional Drilling, Revised Determinations on Reconsideration

On November 2, 1992, the Department issued an Affirmative Determination Regarding Application for Reconsideration for workers and former workers of Dailey Directional Drilling operating in Louisiana, Mississippi and Texas and Dailey Petroleum Services, Inc., in Conroe, Texas. This notice will soon be published in the **Federal Register.**

One of the petitioners states that the Department did not investigate Dailey Directional Drilling which was mentioned on the initial petition dated July 13, 1992. Dailey Directional Drilling operates offshore in the Gulf and in Texas, Louisiana and Mississippi.

Findings on reconsideration show that the preponderant activity for workers at Dailey Directional Drilling is on new wells and that drilling revenue decreased in the first six months of fiscal year (FY) 1992 compared to the same period in FY 1991. Other findings on reconsideration show substantial worker separations at Dailey Directional Drilling in 1991 and 1992.

U.S. imports of crude oil and natural gas increased absolutely and relative to domestic shipments and consumption in the period September 1991 through August 1992 compared to the year earlier.

Exploration and drilling activity in the crude oil and natural gas industry is particularly sensitive to the level of imports and changes in the price level of crude oil. The impact of crude oil imports and reduced price levels has resulted in sharply declining U.S. exploration and drilling activity.

With respect to the workers at Dailey Petroleum Service, the Department's denial was based on the fact that the workers do not produce an article within the meaning of Section 223(3) of the Act. This was fully addressed in the Department's negative determination.

Other findings on reconsideration show that Dailey Petroleum Service (DPS) does not rent drilling rig tools to Dailey Directional Drilling but rents instead to third parties or unaffiliated firms. Accordingly, there is no basis for certifying workers at DPS since their reduced revenues did not come from a reduced demand for their services from Dailey Directional Drilling.

Conclusion

After careful review of the additional facts obtained on reconsideration, it is concluded that increased imports of articles like or directly competitive with crude oil produced at Dailey Directional Drilling in Texas, Louisiana and Mississippi contributed importantly to the decline in sales or production and to the total or partial separation of workers at Dailey Directional Drilling. In accordance with the provisions of the Trade Act of 1974, I make the following revised determination:

All workers of Dailey Directional Drilling in Texas, Louisiana and Mississippi and operating offshore in the Gulf of Mexico who became totally or partially separated from employment on or after July 13, 1991 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

It is further determined that the Department's negative determination for workers at Dailey Petroleum Services in Conroe, Texas be affirmed.

Signed at Washington, DC, this 9th day of December 1992.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Services, Unemployment Insurance Service.

[FR Doc. 92–30634 Filed 12–16–92; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–27,919, et al.]

Hercules Offshore Corp., Houston, TX, et al.; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

Operating at various other places in TA–W–27,919A Texas and Offshore Texas, TA–W–27,919B Louisiana and Offshore Louisiana

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on November 17, 1992, applicable to all workers of Hercules Offshore Corporation, Houston, Texas. The notice was published in the **Federal Register** on December 3, 1992 (57 FR 57242).

At the request of one of the petitioners, the Department reviewed the certification for workers of Hercules Offshore Corporation. New information received from the company shows that Hercules worked in various other places in Texas and Louisiana and offshore Texas and Louisiana.

The intent of the Department's certification is to include all workers of Hercules Offshore Corporation who were affected by increased imports of crude oil and natural gas.

The amended notice applicable to TA–W–27,919 is hereby issued as follows:

All workers of Hercules Offshore Corporation, Houston, Texas and in various other places in Texas and Louisiana and offshore in the Gulf of Mexico who became totally or partially separated from employment on or after October 14, 1991 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 9th day of December 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance

[FR Doc 92-30635 Filed 12-16-92; 8:45 am]

BILLING CODE 4510-30-M

Pension and Welfare Benefits Administration

[Application No. D-8958, et al.]

Proposed Exemptions; California Association of Hospitals and Health Systems Retirement and Tax Savings Investment Plan, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of Proposed Exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and request for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, room N-5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, room N-5507, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

California Association of Hospitals and Health Systems, Retirement and Tax Savings Investment Plan (the Plan), Located in Sacramento, CA

[Application No. D-8958]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, August 10, 1990). If the exemption is granted, the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) shall not apply to the proposed sale by the Plan to the California Association of Hospitals and Health Systems (CAHHS), the Plan sponsor, of its residual investment in a trust rate account pool (the Trust Rate Account Pool) comprised of a portfolio of student loans that had been established by the Plan's former trustee, provided: (1) The sale is a one-time transaction for cash; (2) the Plan is not required to pay any fees or commissions in connection therewith; (3) the Plan receives an amount which is not less than the balance of its residual interest in the Trust Rate Account Pool; (4) the Plan receives interest on its total investment in the Trust Rate Account Pool from May 19, 1989 to the date the exempted transaction is consummated; and (5) any additional amounts that CAHHS receives from the Superintendent of Banks of the State of California (the Superintendent) which are above the Plan's investment of $76,988 in the Trust Rate Account Pool, will be rebated to the Plan.

Summary of Facts and Representations

1. The Plan is a defined contribution plan with 108 participants and assets having a total fair market value of $1,541,601 as of August 31, 1991.[1] The trustee of the Plan is Merrill Lynch Trust Company (MLTC) of Somerset, New Jersey. MLTC has served as a directed trustee for the Plan since May 1989. Investment decisions for the Plan are made by five individuals, each of whom is a member of the Pension Advisory Committee established pursuant to the terms of the Plan. The Pension Advisory Committee is responsible for directing all investments of the Plan's assets.

2. CAHHS, formerly California Hospital Association, is a domestic, non-profit California corporation which is tax exempt under section 501(c)(6) of the Code. CAHHS was organized in 1935 as a trade association representing the interests of the hospital industry in California.

3. First Independent Trust Company (FITCO) of Sacramento, California, which is not affiliated with MLTC, is the former trustee of the Plan. FITCO served in this capacity from January 1, 1989 until May 1, 1989 when it was replaced by MLTC. On May 19, 1989, FITCO became insolvent and its assets were seized by the Superintendent.

4. Among the assets of the Plan is its residual investment in a trust rate account pool established by FITCO and consisting of a portfolio of student loans. The loans comprising the portfolio were either originated by FITCO or purchased by FITCO from other lenders. It is represented that the borrowers were unrelated persons. The amount of the Plan's investment in the

[1] It is represented that the Plan is not a governmental plan within the meaning of section 3(32) of Act.

Trust Rate Account Pool totaled $76,988. Of this amount, $43,044 represented employer contributions and $33,944 represented employee contributions.[2]

5. The Plan's investment in the Trust Rate Account Pool was made at the direction of the Pension Advisory Committee, on or about January 1989 upon FITCO's advice.[3] FITCO invested Plan funds, which it held in Trust, in the Trust Rate Account Pool and it established an account in the Plan's name. The Trust Rate Account Pool earned interest at the rate of 1 percent to 1¼ percent over the 91 day United States Treasury Bill rate.[4] Loans in the Trust Rate Account Pool were also purportedly guaranteed by the Government of the United States or by state or private nonprofit guarantee agencies which were, in turn, reinsured by the United States Government. The guarantee was to apply as long as Federal regulations governing the administration of the loans were followed by FITCO.

6. It was anticipated the Plan could terminate its investment in the Trust Rate Account Pool at any time or at least within one or two banking days as required by the Trust Rate Report. On May 3, 1989, CAHHS requested a withdrawal of all assets in the Plan's account and a transfer of the funds to MLTC. However, on May 19, 1989, the Superintendent seized the assets of FITCO including those held in the Trust Rate Account Pool which had a total balance of $29,589,000. FITCO was also closed and liquidation proceedings were begun.

7. The Superintendent has recovered approximately 83 percent of the outstanding principal balance of the Trust Rate Account Pool. However, it has been unable to return the full amount of the investment or sell the student loans on the secondary market because some of the student loans were either defaulted upon by their borrowers or they were not properly guaranteed due to their mishandling by FITCO. In addition, there is a dispute between the Superintendent and the Federal Government as to which of the student loans were properly guaranteed so full payment has not been made to investors. Further, by letter dated April 20, 1992, the Superintendent indicates that losses have resulted and will continue to occur because some loans are "uninsured and uncollectible," "undocumented" or "not guaranteed." Although the Superintendent has been selling or attempting to sell the assets of FITCO since its liquidation, the Superintendent represents that the sales price of the student loans that are sold may have to be discounted in order to attract a buyer.

8. To date, the Superintendent has transferred $65,612 (excluding interest) to the Plan as a partial return of the Plan's original investment of $76,988 in FITCO. The Superintendent has not charged investors any costs relating to the liquidation or the servicing of assets in the Trust Rate Account Pool. It is the intent of the Superintendent not to pass on any of these costs in the future, even in the event that more than 100 percent of the original principal is recovered.

The Plan's distributions have been placed in a separate account with MLTC and they have earned $3,922 in interest through February 29, 1992.[5] The Superintendent expects to collect and distribute additional assets to FITCO investors but it does not expect that these investors will receive the full value of their investments for the reasons cited above.

9. To assist the Plan in recovering the balance of funds that are outstanding from its FITCO investment, CAHHS proposes to purchase the Plan's remaining investment in the Trust Rate Account Pool from the Plan for $11,376 [representing the total contributions to FITCO of $76,988 minus the $65,612 (excluding interest) which MLTC has recovered from the Superintendent]. The consideration will be paid by CAHHS in cash and the Plan will not be required to pay any fees or commissions. In addition, CAHHS proposes to pay the Plan interest calculated on the original contribution amount of $76,988 from May 19, 1989 to the date the exempted transaction is consummated. CAHHS will base its interest payments to the Plan on the Trust Rate Income Formula as described above in paragraph number 5 and the accompanying footnote. If CAHHS receives any additional payments from the Superintendent which are above the Plan's investment of $76,988 in the Trust Rate Account Pool, such amounts will be rebated to the Plan. All proceeds from the sale will be allocated among the accounts of the participants and beneficiaries of the Plan.

10. In summary, it is represented that the proposed transaction will satisfy the statutory criteria for an exemption under section 408(a) of the Act because: (a) Sale will be a one-time transaction for cash; (b) the Plan will not be required to pay any fees or commissions in connection therewith; (c) the Plan will receive an amount which will not be less than the balance of the residual interest; (d) the Plan will receive interest on its total investment in the Trust Rate Account Pool from May 19, 1989 to the date the exempted transaction is consummated; and (e) any additional amounts that CAHHS receives from the Superintendent which are above the Plan's investment of $76,988 in the Trust Rate Account Pool, will be rebated to the Plan.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Massachusetts Mutual Life Insurance Company (MassMutual) Located in Boston, MA

[Application No. D–9057]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted the restrictions of sections 406(a) and 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) of the Code, shall not apply to the proposed arrangement, over a five year period, whereby MassMutual's general account (the General Account) will extend credit to unrelated third parties who purchase one or more parcels of real property (the Properties) from the MassMutual Real Estate Pooled Separate Account, SIA–R (the Separate Account), a separate account maintained by MassMutual on behalf of employee benefit plans (the

[2] The applicants represent that the Plan's original investment in FITCO's Trust Rate Account Pool is covered by the statutory exemptive relief that is available under section 408(b)(8) of the Act. The Department expresses no opinion herein on whether the investment satisfies the terms and conditions of section 408(b)(8) of the Act.

[3] The Department notes that the decision, by the Pension Advisory Committee, to invest Plan assets in FITCO's Trust Rate Account Pool is governed by the fiduciary responsibility requirements of Part 4 of Title I of the Act. In this proposed exemption, the Department is not proposing relief for any violations of Part 4 which may have arisen as a result of the Plan's investment in the Trust Rate Account Pool.

[4] According to the applicants, the rate of return promised by FITCO is specified in the Trust Rate Report. Page 3 of the report states that Trust Rate income will be computed quarterly and will be calculated as the average of the 91 day Treasury Bill auctions during the calendar quarter, rounded up to the next highest one-quarter percent, plus one percent. The applicants note that if the average Treasury Bill rate for a given quarter is 6.08 percent, the Trust Rate income for that quarter will be 7.25 percent (6.08 percent rounded up to 6.25 percent plus 1 percent).

[5] Other than interest generated from the distributions, the Plan has received no interest income from FITCO in connection with its investment in the Trust Rate Account Pool.

Plans); provided that the following conditions are satisfied:

(A) All conditions of the transactions are no less favorable to the Separate Account than those which the Separate Account could obtain in arm's-length transactions not involving the General Account;

(B) The Separate Account receives a purchase price for each Property which is not less than the fair market value of that Property on the date of sale;

(C) The transactions do not involve sales of any of the Properties to any parties in interest with respect to the Plans participating in the Separate Account;

(D) No commissions, fees, or expenses in connection with the transaction are paid to MassMutual or any of its affiliates, other than loan origination fees of no more than .25 percent per transaction;

(E) The General Account does not charge or receive interest in excess of the fair market rate of interest;

(F) The interests of the Separate Account in the transactions are represented by one of the following fiduciaries (the Fiduciaries): Joseph J. Blake Separate Account Associates of Los Angeles, California; Realty Advisory Group of Virginia Beach, Virginia; Realty Consultants, Ltd. of Chicago, Illinois; Trahan Separate Account Partners of Houston, Texas; or American Appraisal Associates of Boston, Massachusetts;

(G) No transaction involving General Account financing of a Property sale shall occur until the appropriate Fiduciary has approved the transaction and completed a written report relating its findings with respect to the transaction (the Report); and

(H) The Report is made available for inspection by any duly authorized representative of the Department, the Internal Revenue Service (the Service) and any fiduciary of a Plan participating in the Separate Account, for a period of no less than six years from the date of the transaction.

Temporary Nature of the Exemption

This exemption, if granted, will expire five years from the date on which the final grant of the exemption is published in the **Federal Register.**

Summary of Facts and Representations

1. MassMutual is a mutual life insurance company organized under the laws of the Commonwealth of Massachusetts, with total assets of over $39.3 billion as of December 31, 1991. Among the investment activities of MassMutual are real estate mortgage investments and equity real estate investments. MassMutual represents that it holds more than $5 billion in real estate investments under management for its own General Account and for others, including employee benefit plans covered by the Act (the Plans). In the ordinary course of its business, MassMutual performs a wide variety of services for Plans, including administration and investment services.

2. MassMutual represents that the Separate Account is a pooled fund, as described in regulations of the Department, at 29 CFR 2570.31(g). MassMutual established the Separate Account on October 1, 1981 as a vehicle for Plan fiduciaries to invest Plan assets in real property. The Separate Account invests primarily in equity ownership of income-producing properties. Participation in the Separate Account is available only to qualified pension, profit-sharing, and annuity Plans. The assets held by MassMutual on behalf of the Separate Account consist of equity interests in a geographically diverse portfolio of nine commercial properties (the Properties) ranging in size from 32,000 to 131,000 square feet. As of March 31, 1992, the Separate Account had total assets valued at $39,943,638, consisting of the Properties, valued at $39,515,688, and $427,950 in cash.

3. Every Plan which invests in the Separate Account (the Invested Plans) enters into a group annuity contract (the Contract) with MassMutual, under which the Invested Plans deposit monies for investment in the Separate Account. MassMutual acts as a fiduciary with respect to the Invested Plans' assets invested in the Separate Account. Each Invested Plan has the right under the Contract to withdraw all or any portion of its investments in the Separate Account. As of April 16, 1992, all Invested Plans had requested withdrawal of all investments in the Separate Account. MassMutual represents that at the time of the establishment of the Separate Account it was anticipated that any withdrawal requests could be satisfied from ongoing cash investments by Plans, income streams from properties held by the Separate Account, or sales of the Properties by the Separate Account to unrelated parties. In recent years, however, as regional and national real estate markets have deteriorated, the Separate Account has not received sufficient cash to provide the necessary liquidity to honor withdrawal requests.

4. MassMutual is proceeding with efforts to sell the Properties in order to provide the cash needed to honor the withdrawal requests of the Invested Plans. MassMutual maintains, however, that a major impediment to the sales of the Properties is the lack of available financing to prospective buyers. MassMutual represents that the limited availability of financing and the magnitude of the outstanding requests for withdrawals from the Separate Account are factors in MassMutual's conclusion that it should provide more active assistance to prospective buyers of the Properties. Accordingly, MassMutual proposes to utilize its General Account to finance the purchases of the Properties by unrelated buyers, and is requesting an exemption for such transactions under the terms and conditions described herein.

5. It is proposed that the General Account will provide the financing to enable the purchase by unrelated third parties of one or more of the Properties from the Separate Account, with the purchase price paid for each Property negotiated at arm's length between the Separate Account and the purchaser. As part of the marketing of the Properties, prospective buyers will be notified that market-rate financing is available to qualified buyers through MassMutual's General Account. The purchase price for each Property, in any sale financed by the General Account, will be no less than the fair market value of the subject Property at the time of the sale, and the interest to be charged by the General Account for the financing will not be in excess of the prevailing market rate of interest. The proposed exemption will apply only to transactions in which the purchasers of the Properties are third parties who are not parties in interest with respect to any of the Plans. All terms of the transaction will be reviewed in advance by an independent fiduciary (discussed below) to ensure compliance with these requirements.

6. In each Property sale transaction, in which financing is to be provided by the General Account, an independent fiduciary (the Fiduciary) will act in a fiduciary capacity on behalf of the Separate Account pursuant to a written agreement in which the Fiduciary acknowledges its status as a fiduciary under the Act, and its responsibilities and liabilities as such. As a condition of each such transaction, prior to the transaction, the Fiduciary must approve the proposed transaction and complete a written report (the Report) relating the Fiduciary's findings with respect to certain required determinations, described below, which the Fiduciary must make concerning the subject transaction. The Fiduciary in each transaction will be the independent professional real property appraiser which historically has represented the interests of the Separate Account for appraisal and management purposes

with respect to each Property. The Fiduciaries, and the Separate Account's Property for which each has acted as appraiser and will act as Fiduciary, are described as follows:

(a) Joseph J. Blake Separate Account Associates in Los Angeles, CA: Hycor Biomedical, Powdermill Plaza, and Cobblestone Village in Los Angeles;

(b) Realty Advisory Group in Virginia Beach, Virginia: Comptek Office Building in Virginia Beach;

(c) Realty Consultants, Ltd. in Chicago, Illinois: Finley Business Center and Kennicott Industrial in Chicago;

(d) Trahan Separate Account Partners in Houston, Texas: Perimeter Center and Century Center in Houston;

(e) American Appraisal Associates in Boston, Massachusetts: Union Hill Residence Inn in Boston.

MassMutual represents that the Fiduciaries are highly qualified as appraisers, with broad experience in regional and national markets involving a variety of clients. MassMutual represents that the Fiduciaries are independent of MassMutual, with no ownership interests in MassMutual, and that MassMutual has no ownership interests in any of the Fiduciaries. MassMutual represents that each Fiduciary's business with MassMutual has represented less than one percent of each Fiduciary's total billings for 1989, 1990 and 1991, except for Realty Consultants, Ltd., whose business with MassMutual represented approximately 1.5 percent of that firm's total billings for those years. MassMutual maintains that these firms are highly qualified, and the best available, to evaluate the Properties and the proposed terms of any sales and financing thereof, due to their familiarity with the Properties.

7. With respect to the Property under its authority, each Fiduciary will be responsible for evaluating the proposed sales price negotiated between the Separate Account and the buyer of the Property, including valuations made with respect thereto, the terms of the financing offered by the General Account, and the fees or other costs associated with the transaction. The Fiduciary is required specifically to evaluate the interest rate provisions of the General Account's proposed financing of the Property sale, to ensure that the General Account will not charge interest in excess of the market interest rate, and to determine that the interest rate proposed by the General Account does not adversely affect the sale price for the Property. No Property sale involving General Account financing will occur until the Fiduciary has approved of the proposed transaction and completed the Report relating its findings with respect to each of the aforementioned determinations, and the Report will remain available for inspection by any duly authorized representative of the Department, the Service, and any fiduciary of an Invested Plan, for a period of no less than six years from the date of the transaction. More specifically, each proposed Property sale involving General Account financing will require the following determinations with respect to the proposed transaction, to be included in the Report:

(a) *Sales price:* The Fiduciary will review the valuation of the Property and the proposed sales price negotiated between the Separate Account and the prospective unrelated buyer. No sale will be made until the Fiduciary has concluded that the valuation of the Property is consistent with current market values, that the sale price is in the best interests of the participants and beneficiaries of the Invested Plans, that such price is no less than the fair market value of the Property, and that the price has not been adversely affected by the financing of the transaction by the General Account.

(b) *Financing terms:* The Fiduciary will evaluate the terms of the financing offered by the General Account and must determine that the interest rate is no greater than the prevailing market rate of interest, taking into account the particular loan amount, loan term, likely holding period, and the type of Property. In analyzing the interest rate, the Fiduciary will refer to commercial mortgages for comparable properties with comparable holding periods. The Fiduciary is also required to find that the terms of the financing do not unduly favor the General Account.

(c) *Evaluation of fees:* The Fiduciary will evaluate all fees, charges, and expenses paid to or by the Separate Account in connection with the proposed transaction. No fees, commissions, or expenses (other than a loan origination fee, or "points", discussed below) related to any Property sale financed by the General Account will be paid to MassMutual or any of its affiliates. Any fees, commissions and other expenses arising from the transaction will be payable only to parties unrelated to MassMutual and the Fiduciary. The Fiduciary will also determine that the "points" charged, if any, by the General Account to the borrower, as discussed below, do not exceed amounts charged by commercial lenders in comparable transactions. The Fiduciary will evaluate all fees payable by the Separate Account, including broker's fees, legal fees, recording taxes, title fees, and miscellaneous fees required to be paid by state or municipal law. The Fiduciary's findings regarding these fees and charges will be included in the Report. With respect to such fees and charges, the Fiduciary must find that the proposed sale transaction involving General Account financing is as favorable to the Separate Account as the Separate Account could obtain in an arm's-length transaction with an unrelated party.

8. The General Account may charge the borrower a loan origination fee (the Points) of no more than one quarter of one percent of the loan amount, payable by the borrower to the General Account at the time of closing. MassMutual represents that the amount of Points proposed to be charged does not exceed the points charged by commercial lenders in comparable transactions. The Fiduciary is required in each transaction to determine that the Points charged, if any, by the General Account do not exceed the points charged by commercial lenders in comparable transactions.

9. MassMutual represents that all terms and conditions of the General Account's financing of any Property sale will be in accordance with MassMutual's standard real estate lending practices, including the following details: A market rate of interest, a loan-to-value ratio of 75 percent, a loan duration of three to ten years, a duly-filed security interest in the collateral property, provisions making the loan non-recourse as to the borrower, a first-lien position, cash equity of at least 25 percent, mortgage insurance, and restrictions on assignments of leases.

10. In summary, the applicant represents that the proposed transactions satisfy the criteria of section 408(a) of the Act for the following reasons: (1) The requested exemption will involve one-time transactions for cash, which will be utilized by the Separate Account to satisfy the outstanding withdrawal requests of Invested Plans; (2) The Separate Account will be represented in each transaction by one of the Fiduciaries, professional real property appraisal firms experienced with the Properties, which will review and evaluate all terms and conditions of the transactions to ensure compliance with the terms of the requested exemption; (3) Each transaction will require the respective Fiduciary's approval, based on written findings in the Report, prior to consummation; (4) The Separate Account will sell the Properties for their fair market values at the time of sale; (5) No fees, commissions or other charges will be payable to MassMutual or any of

its affiliates in connection with any transaction, except the Points limited to .25 percent per transaction, and (6) The General Account will receive no more than the prevailing market interest rate for providing the financing for any sale of the Properties.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Plan of Wachovia Corporation Diversified Funds for Retirement Trusts (the Wachovia Diversified Funds) and the South Carolina National Bank Collective Investment Fund for Corporate Employee Benefit Trusts Declaration of Trusts (the SCNB Collective Investment Fund) Located in Winston-Salem, NC and Columbia, SC, Respectively

[Application Nos. D–9143 and D–9144, respectively]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of section 406(b)(2) of the Act shall not apply to: (1) The merger of the SCNB Short Maturity Bond Fund (the SCNB Bond Fund) into the Wachovia Short-Term Bond Fund (the Wachovia Bond Fund) (2) the merger of the SCNB Managed Guaranteed Investment Contract Fund (the Managed GIC Fund) into the Wachovia Guaranteed Investment Contract Fund (the Wachovia GIC Fund), or (3) the merger of the SCNB Growth Stock Fund (the Growth Stock Fund) into the SCNB Stock Fund (the Stock Fund).[6]

The proposed exemption is conditioned on the following requirements:

(1) Upon completion of the merger of the SCNB Bond Fund into the Wachovia Bond Fund, the Managed GIC Fund into the Wachovia GIC Fund and SCNB's Growth Stock Fund into its Stock Fund, the aggregate fair market value of the interest of an employee benefit plan (the Plan) participating in the transferee Fund immediately following the merger, together with any cash received in lieu of fractional units in the transferee Fund, equals the aggregate fair market value of such Plan's interest in the transferor Fund immediately before the merger.

[6] For purposes of this proposed exemption, the Funds described herein are collectively referred to as the Funds.

(2) Neither Wachovia Bank of North Carolina, N.A. (Wachovia), South Carolina National Bank (SCNB) nor any of their affiliates receives a fee or commission in connection with the mergers.

(3) The assets of each participating Plan are invested in the same type of investments both before and after the proposed merger.

Summary of Facts and Representations

1. Wachovia and SCNB are national banking associations and members of an "affiliated group" as defined in section 1504 of the Code. Wachovia is the principal subsidiary of Wachovia Corporation of North Carolina, a bank holding company incorporated under the laws of North Carolina. SCNB is the principal subsidiary of South Carolina National Corporation, a bank holding company incorporated under the laws of South Carolina. The Wachovia Corporation of North Carolina and South Carolina National Corporation are the principal subsidiaries of the Wachovia Corporation. The Wachovia Corporation of North Carolina and South Carolina National Corporation are the principal subsidiaries of the Wachovia Corporation. These entities are also bank holding companies registered with the Board of Governors of the Federal Reserve System.

2. The Wachovia Diversified Funds and the SCNB Collective Investment Fund, which are trusteed by Wachovia and SCNB, respectively, are common funds maintained for the collective investment of monies contributed thereto by pension, profit sharing or stock bonus plans which are exempt from Federal income taxation under section 501(a) of the Code by reason of qualifying under section 401(a) of the Code.

3. Both the Wachovia Diversified Funds and the SCNB Collective Investment Fund have short-term bond funds (the Bond Funds) organized thereunder with each having substantially identical investment objectives and investments. In the case of the Wachovia Diversified Funds, the Bond Fund is called the "Wachovia Short-Term Bond Fund." In the case of the SCNB Collective Investment Fund, the Bond Fund is known as the "SCNB Short Maturity Bond Fund." The aggregate fair market value of the Bond Funds as of February 28, 1992 and the number of Plans participating therein as of December 31, 1991 are as follows:

Bond funds	Plans	Total assets
Wachovia Bond Fund	179	$119,739,400
SCNB Bond Fund	54	26,220,930

4. Both the Wachovia Diversified Funds and SCNB Collective Investment Fund also have guaranteed investment contract funds (the GIC Funds) organized thereunder. In the case of the Wachovia Diversified Funds, the GIC Fund is referred to as the "Wachovia GIC Fund." With respect to the SCNB Collective Investment Fund, the GIC Fund is called the "Managed GIC Fund." Both GIC Funds have substantially identical investment objectives and the assets of each are invested in similar types of guaranteed investment contracts. The approximate fair market value of the assets of the GIC Funds as of February 28, 1992 and the number of Plans participating therein as of December 31, 1991 are as follows:

GIC funds	Plans	Total assets
Wachovia GIC Fund	127	$119,244,968
Managed GIC Fund	39	19,339,655

5. In addition to its Bond and GIC Funds, the SCNB Collective Investment Fund has two equity funds. These Funds are referred to herein as the "Growth Stock Fund" and the "Stock Fund." The Growth Stock Fund and the Stock Fund (collectively, the SCNB Stock Funds) have substantially the same investment objectives and investments. The aggregate fair market value of assets in the SCNB's Stock Funds as of February 28, 1992 and the number of Plans participating therein as of December 31, 1991 are as follows:

SCNB stock funds	Plans	Total assets
Growth Stock Fund	109	$8,403,842
Stock Fund	152	73,945,470

6. To improve administration of the Bond and GIC Funds and thereby improve service to Plans participating therein, Wachovia and SCNB propose to merge the Bond Funds and the GIC Funds such that the two surviving Funds will be the Wachovia Bond Fund and the Wachovia GIC Fund. Similarly, to improve the administration of its Stock Funds, SCNB proposes to merge the Growth Stock Fund and the Stock Fund such that the Stock Fund will be the surviving Fund. Accordingly, an administrative exemption is also requested from the Department.

7. The proposed mergers will be accomplished as follows:

a. The assets of the Funds (including all accrued interest and, in the case of the Stock Fund, all accrued income)

will be valued as of the merger date (the Merger Date) which will be the date declared by Wachovia and SCNB following receipt of the exemptive relief requested herein.

b. As of the Merger Date, SCNB will transfer the assets of the SCNB Bond Fund and the assets of the Managed GIC Fund to Wachovia, as trustee. In addition, SCNB will transfer assets from its Growth Stock Fund to its Stock Fund.

c. The transferred assets will be commingled for investment purposes following the Merger Date with the assets of the Wachovia Short-Term Bond Fund and the Wachovia GIC Fund. As such, all income earned in the transferor Bond, GIC and Growth Stock Funds will be deemed to have been earned in the transferee Bond, GIC or Stock Funds.

d. The participating Plans in the SCNB Bond Fund will become participating Plans in the Wachovia Bond Fund. Similarly, the participating Plans in the Managed GIC Fund will become participating Plans in the Wachovia GIC Fund. Also, as of the Merger Date, the participating Plans in the Growth Stock Fund of SCNB will become participating Plans in the Stock Fund.

e. The SCNB Bond Fund, Managed GIC Fund or Growth Stock Fund will have allocated to it as of the Merger Date, units in the Wachovia Bond Fund, Wachovia GIC Fund or Stock Fund. Such units will represent the fair market value of the assets transferred from the applicable Fund. In addition, each participating Plan involved in the applicable transferor Fund, immediately preceding the merger Date, will have allocated to it as of the Merger Date, the same proportion of units in the transferee Fund equal to the proportion of the units it had in the transferor Fund immediately preceding the merger. However, no fractional units of participation in the Wachovia Bond Fund, the Wachovia GIC Fund or the Stock Fund will be issued in the merger.

f. The Wachovia Bond Fund, the Wachovia GIC Fund and the Stock Fund will pay cash equal to the fair market value of any such fractional unit to which a participating Plan in the SCNB Bond Fund, the Managed GIC Fund or the Growth Stock Fund would otherwise have been entitled. However, neither Wachovia, SCNB nor their affiliates will receive a fee or commission in connection with the mergers.

8. In summary, it is represented that the proposed transactions will satisfy the statutory criteria for an exemption under section 408(a) of the Act because: (a) The fair market value of the interest of the Plans participating in the affected Funds will remain unchanged as a result of the proposed mergers, (b) neither Wachovia, SCNB or any of their affiliates will receive a fee or commission in connection with the proposed mergers, (c) the assets of each participating Plan will be invested in the same type of investment both before and after the proposed merger, and (d) the proposed mergers will result in greater operational efficiencies and economies of scale as well as greater opportunities for investment diversification.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 11th day of December, 1992.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 92–30521 Filed 12–16–92; 8:45 am]

BILLING CODE 4510–29–M

[Prohibited Transaction Exemption 92–83; Exemption Application No. D–9067 et al.]

Grant of Individual Exemptions; J.J. Johnson & Associates Employees Profit Sharing Trust, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

J.J. Johnson & Associates Employees Profit Sharing Trust (the Plan), Located in Rochester, New York

[Prohibited Transaction Exemption 92–93; Exemption Application No. D–9067]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed payment by The Sear-Brown Group, Inc. (SB) of certain legal expenses incurred by the Plan, and the repayment of those expenses by the Plan to SB, provided the following conditions are met: (a) The Plan pays no interest or other expenses in connection with the transaction; (b) the Plan will reimburse SB for the expenses solely from the proceeds of any recovery awarded to the Plan in connection with the litigation (the Litigation); (c) to the extent the amount of the recovery, if any, is less than the amount of the legal expenses paid by SB, the Plan shall not be liable to SB for the difference.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on August 27, 1992 at 57 FR 38858.

WRITTEN COMMENTS AND HEARING REQUESTS: The Department received 16 comments and no hearing requests with respect to the proposed exemption. All of the commentators opposed the granting of the exemption. Among the reasons given for their opposition to the exemption were: (1) The Plan has nothing to gain from pursuing the Litigation; (2) the Litigation had been brought as a result of a personal vendetta against the Plan's original trustee, not because it has any merit; (3) the commentators do not want the payment of legal expenses to come out of Plan assets; and (4) the Litigation should never have been commenced, and the money the Plan already has expended on the Litigation has been wasted.

The applicant has responded to the comments submitted. The current trustees of the Plan represent that they brought the Litigation not out of personal animus against the defendant, but because they believe the Plan had been harmed, and they should seek to obtain a recovery for the Plan. With respect to the other comments, the applicant represents that the Plan and its participants and beneficiaries can only benefit from the granting of the proposed exemption. By permitting SB to pay the Litigation costs and be reimbursed by the Plan out of any recovery, the proposed exemption will enable the Plan to pursue an action that may result in the recovery of additional amounts for the Plan. However, if there is no recovery for the Plan, the Plan will have no obligation to reimburse SB. Thus, the proposed exemption gives the Plan the "upside" potential of obtaining a recovery, without exposure to the "downside" risk of having paid expenses without a recovery of additional amounts. The Plan, therefore, can only gain and cannot lose. Thus, the applicant represents that the proposed exemption will not adversely affect the Plan and should be granted.

The Department has considered the entire record, including the 16 comments submitted with respect to the proposed exemption and the response to the comments submitted by the applicant, and has determined to grant the exemption as proposed. The Department wishes to note, as it did in the proposed exemption, that it is expressing no opinion regarding the merits of the Litigation. In addition, the Department notes that the decision to expend Plan assets to commence the Litigation was a decision that is governed by the fiduciary responsibility requirements of part 4, subtitle B, title I of the Act. In this regard, the Department is granting no relief herein for any violations of part 4 of the Act which may have arisen as a result of the expenditure of $20,000 of the Plan's assets to commence the Litigation.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Norwood Clinic, Inc. Defined Benefit Plan (the Plan), Located in Birmingham, AL

[Prohibited Transaction Exemption 92–94; Exemption Application No. D–9181]

Exemption

The restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the cash sale by the Plan of a group annuity contract (the GAC) to Norwood Clinic, Inc., a party in interest with respect to the Plan; provided that the following conditions are satisfied:

(1) The sale is a one-time transaction for cash;

(2) The Plan receives a purchase price for the GAC of no less than its fair market value as of the Distribution Date (described in the Notice of Proposed Exemption); and

(3) The Plan does not incur any costs or expenses related to the sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on October 22, 1992 at 57 FR 48247.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401 (a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all

material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 11th day of December, 1992.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 92–30520 Filed 12–16–92; 8:45 am]

BILLING CODE 4510–29–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Challenge/Advance Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Challenge/ Advancement Advisory Panel (Challenge Review Committee Section) to the National Council on the Arts will be held on January 6, 1993 from 9 a.m.–5:30 p.m. and January 7 from 9 a.m.–5 p.m. in room M–14 at the Nancy Hanks Center, 100 Pennsylvania Avenue, NW., Washington, DC 20506.

Portions of this meeting will be open to the public on January 6 from 9 a.m.–10 a.m. and January 7 from 4 p.m.–5 p.m. for opening remarks and policy discussion.

The remaining portions of this meeting on January 6 from 10 a.m.–5:30 p.m. and January 7 from 9 a.m.–4 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 24, 1992, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5439.

Dated: December 10, 1992.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 92–30593 Filed 12–16–92; 8:45 am]

BILLING CODE 7537–01–M

Notice of Meeting: Challenge/ Advancement Advisory Panel (Museum Advancement Section)

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Challenge/ Advancement Advisory Panel (Museum Advancement Section) to the National Council on the Arts will be held on January 14, 1993 from 9 a.m.–5:30 p.m. in room 730 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

Portions of this meeting will be open to the public from 9 a.m.–10 a.m. and from 5 p.m.–5:30 p.m. The topics will be introductory remarks, an overview of Advancement, and policy discussion.

The remaining portion of this meeting from 10 a.m.–5 p.m. is for the purpose of Panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 24, 1992, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5439.

Dated: December 10, 1992.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 92–30613 Filed 12–16–92; 8:45 am]

BILLING CODE 7537–01–M

Notice of Meeting: Challenge/ Advancement Advisory Panel (Advance Phase II Grant Section)

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Challenge/ Advancement Advisory Panel (Advancement Phase II Grant Section) to the National Council on the Arts will be held on January 11, 1993 from 9 a.m.–5:30 p.m. and January 12 from 9 a.m.–5 p.m. in room 730 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

Portions of this meeting will be open to the public on January 11 from 9 a.m.–10 a.m. and January 12 from 4 p.m.–5 p.m. for opening remarks and policy discussion.

The remaining portions of this meeting on January 11 from 10 a.m.–5:30 p.m. and January 12 from 9 a.m.–4 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 24, 1992, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee

Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5439.

Dated: December 10, 1992.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 92–30614 Filed 12–16–92; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL INSTITUTE FOR LITERACY

Notice of Meeting

AGENCY: National Institute for Literacy Advisory Board Meeting.

ACTION: Notice of meeting.

SUMMARY: This Notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Institute for Literacy Advisory Board (Board). This notice also describes the function of the Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend the open portions of the meeting.

DATES: January 11, 1993 from 9 A.M. to 4 P.M., January 12, 1993 from 9 A.M. to 12 P.M.

ADDRESSES: National Institute for Literacy, 800 Connecticut Avenue, NW., suite 200, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Thomas R. Hill, Executive Officer, National Institute for Literacy, 800 Connecticut Avenue, NW., suite 200, Washington, DC 20006. Telephone (202) 632–1500.

SUPPLEMENTARY INFORMATION: The Board is established under Section 384 of the Adult Education Act, as amended by Title I of Public Law 102–73, the National Literacy Act of 1991. The Board consists of ten individuals appointed by the President with the advice and consent of the Senate. The Board is established to advise and make recommendations to the Interagency Group, composed of the Secretaries of Education, Labor, and Health and Human Services, which administers the National Institute for Literacy (Institute). The Interagency Group considers the Board's recommendations in planning the goals of the Institute and in the implementation of any programs to achieve the goals of the Institute. Specifically, the Board performs the following functions: (a) Makes recommendations concerning the appointment of the Director and the staff of the Institute; (b) provides independent advice on operation of the Institute; and (c) receives reports from the Interagency Group and the Director of the Institute.

In addition, the Institute consults with the Board on the award of fellowships.

The Board meeting is open to the public. The proposed agenda includes: Discussion of program priorities, recruitment process for the selection of the Institute Director, vision and mission of the Institute and organization structure of the Institute.

Records are kept of all Board proceedings and are available for public inspection at the National Institute for Literacy, 800 Connecticut Avenue, NW., suite 200, Washington, DC 20005 from 8:30 a.m. to 5 p.m.

Franmarie Kennedy-Keel,

Interim Director, National Institute for Literacy.

[FR Doc. 92–30641 Filed 12–16–92; 8:45 am]

BILLING CODE 6055–01–M

OFFICE OF PERSONNEL MANAGEMENT

Federal Salary Council; Notice of Meetings

AGENCY: Office of Personnel Management.

ACTION: Notice of meetings.

SUMMARY: According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that the seventeenth and eighteenth meetings of the Federal Salary Council will be held at the times and places shown below. The agenda for these meetings will be the discussion of issues relating to the new locality-based comparability payments authorized by the Federal Employees Pay Comparability Act of 1990 (FEPCA). The meetings will be open.

DATES: January 29 and February 26, 1993, beginning at 10 a.m.

ADDRESSES: Office of Personnel Management, 1900 E Street, NW., room 7B09, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ruth O'Donnell, Chief, Salary Systems Division, Office of Personnel Management, 1900 E Street, NW., room 6H31, Washington, DC 20415–0001. Telephone number: (202) 606–2838.

For the President's Pay Agent:

Douglas A. Brook,

Acting Director.

[FR Doc. 92–30526 Filed 12–16–92; 8:45 am]

BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–25702]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

December 11, 1992.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by January 4, 1993, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Mississippi Power & Light Co.

[70–7914]

Mississippi Power & Light Company ("MP&L"), P.O. Box 1640, Jackson, Mississippi 39215–1640, an electric public-utility subsidiary company of Entergy Corporation, a registered holding company, has filed a post-effective amendment under sections 6(a) and 7 of the Act and rule 50(a)(5) thereunder to its application-declaration filed under sections 6(a), 7, 9(a), 10, 12(c) and 12(e) of the Act and rules 42, 50, 50(a)(5), 62 and 65 thereunder.

By order dated December 19, 1991 (HCAR No. 25432) ("December 1991 Order"), MP&L was authorized, from January 1, 1992 through December 31, 1993, to acquire, in whole or in part, one or more series of MP&L's outstanding first mortgage bonds, general and refunding mortgage bonds, preferred stock, and/or pollution control

revenue bonds. The December 1991 Order reserved jurisdiction over MP&L's proposal, from January 1, 1992 through December 31, 1993, to: (1) Issue and sell up to $150 million aggregate principal amount of one or more new series of general and refunding mortgage bonds ("Bonds"); (2) issue and sell up to $37.5 million aggregate par value of preferred stock, cumulative, $100 par value, in one or more new series ("New Preferred"); (3) enter into transactions relating to the issuance and sale of up to $25 million of tax-exempt bonds, in one or more series; and (4) amend its Restated Articles of Incorporation, as amended, to establish a new class of preferred stock having no par value or a nominal par value.

By order dated October 20, 1992 (HCAR No. 25656) ("October 1992 Order"), MP&L was authorized to issue and sell $37.5 million aggregate par value of New Preferred by means of competitive bidding. The October 1992 Order reserved jurisdiction over MP&L's proposal ("Reversed Transactions") to, from January 1, 1992 through December 31, 1993: (1) Issue and sell up to $150 million aggregate principal amount of one or more new series of Bonds; (2) issue and sell up to $37.5 million aggregate par value of New Preferred by negotiated public offering or private placement and the granting of an exception from the competitive bidding requirements of rule 50; (3) enter into transactions relating to the issuance and sale of up to $25 million of tax-exempt bonds, in one or more series; and (4) amend its Restated Articles of Incorporation, as amended, to establish a new class of preferred stock having no par value or a nominal par value.

By order dated November 13, 1992 (HCAR No. 25675) ("November 1992 Order"), MP&L was authorized to issue and sell $65 million aggregate principal amount of two new series of Bonds ("New Bonds"), in each case by means of direct private placement. The New Bonds were issued and sold by MP&L on November 20, 1992. The November 1992 Order continued the reservation of jurisdiction over the Reversed Transactions.

NP&L now proposes to increase the principal amount of the Bonds remaining to be issued and sold by $150 million, to not more than $235 million ("Additional Bonds"), under the same terms and conditions as are currently applicable to the Bonds. In addition, MP&L requests that it be able to conduct preliminary negotiations with respect to the terms of any series of the Additional Bonds to be issued and sold by negotiated public offering or private placement pursuant to the exception under rule 50(a)(5) from the competitive bidding requirements of rule 50. It may do so.

Pennsylvania Electric Co.

[70–7923]

Pennsylvania Electric Company ("Penelec"), 1001 Broad Street, Johnstown, Pennsylvania 15907, an electric public-utility subsidiary company of General Public Utilities Corp., a registered holding company, has filed a post-effective amendment to its declaration under section 12(d) of the Act and Rule 44 thereunder.

By order dated February 5, 1992 (HCAR No. 25466) ("February 1992 Order"), Penelec was authorized to sell ("Sale") certain utility assets to Advanced Cast Products, Inc. ("Advanced"), a nonassociate company, for $140,000 in cash. Penelec has not yet completed the Sale, and the authorization under the February 1992 Order has expired. Penelec now proposes to consummate the Sale on or before June 30, 1993.

Penelec expects to apply the proceeds of the proposed sale to general corporate purposes. The assets consist of certain electric substation facilities and equipment located in Vernon Township, Crawford County, Pennsylvania ("Meadville Substation"). The Meadville Substation is situated on lands owned by Advanced and is operated solely to serve the electric service needs of Advanced. It is stated that the sale will enable Advanced to qualify for a more favorable electric service rate.

Penelec will sell the Meadville Substation pursuant to an October 1989 agreement ("Agreement") between Penelec and Advanced's predecessor in interest, Amcast Industrial Corporation ("Amcast"), also a nonassociate company. Amcast assigned the Agreement to Advanced on July 3, 1990.

Massachusetts Electric Co.

[70–8101]

Massachusetts Electric Company ("Mass Electric"), 25 Research Drive, Westborough, Massachusetts 01582, an electric public-utility subsidiary company of New England Electric System, a registered holding company, has filed a declaration under section 12(c) of the Act and Rule 42 thereunder.

Mass Electric proposes to redeem up to 350,000 shares ($35 million par value) of its preferred stock ("Cumulative Preferred Stock"), 7.84% Series at the then applicable redemption price, currently $103.25 per share, together with dividends accrued to the date of redemption.

By order dated October 30, 1992 (HCAR No. 25664) ("October Order"), Mass Electric was authorized to solicit proxies and obtain a vote of its shareholders in connection with a proposed amendment to its Articles of Organization and By-laws to allow for the issuance of additional shares of preferred stock at various par values. The 7.84% Series and 7.80% Series of Mass Electric's Cumulative Preferred Stock are now callable under the established terms of the preferred stock. At dividend rates below approximately 7%, it may become economical for Mass Electric to refinance this series with new preferred stock. It is estimated that if Mass Electric were to issue perpetual preferred stock in the current market, the rate would approximate 7¾%.

The Narragansett Electric Co.

[70–8103]

The Narragansett Electric Company ("Narragansett"), 280 Melrose Street, Providence, Rhode Island 02901, an electric public-utility subsidiary company of New England Electric System, a registered holding company, has filed a declaration under section 12(c) of the Act and rule 42 thereunder.

Narragansett proposes to redeem up to 200,000 shares ($10 million par value) of its preferred stock ("Cumulative Preferred Stock"), 8% Series at the currently applicable redemption price of $51.96 per share, together with dividends accrued to the date of redemption.

By order dated October 30, 1992 (HCAR No. 25664) ("October Order"), Narragansett was authorized to solicit proxies and obtain a vote of its shareholders in connection with a proposed amendment to its preferred stock preference provisions to allow for the issuance of additional shares of preferred stock at various par values. The 8% Series of Narragansett's Cumulative Preferred Stock is now callable under the established terms of the preferred stock. At dividend rates below approximately 7.25%, it may become economical for Narragansett to refinance this series with new preferred stock. It is estimated that if Narragansett were to issue perpetual preferred stock in the current market, the rate would approximate 7¾%.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–30648 Filed 12–16–92; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34-31583; File No. SR-NASD-92-50]

Self-Regulatory Organizations; Notice of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Excess Spread Parameters

December 9, 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 November 24, 1992, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The following is the full text of the proposed rule change to Part VI, Section 2 of Schedule D to the NASD By-Laws. Additions are in italics; deletions are in brackets.

Schedule D

* * *

Part VI

* * *

Sec. 2. Character of Quotations

* * *

(d) Excess Spreads. A market maker shall not enter quotations in [to the Nasdaq System] *Nasdaq or Consolidated Quotation Service (CQS) securities* that exceed the parameters for maximum allowable spread as *approved by the NASD Board of Governors and that* may be published from time to time by the Association. [*] *The maximum allowable spreads shall be 125 percent of the average of the three (3) narrowest market maker spreads in each security (if there are fewer than three (3) market makers in a security, the maximum allowable spread will be 125% of the average spread); provided however, that the maximum allowable spread shall never be less than 1/4 point.*

[*The following are the current maximum allowable spreads approved by the NASD Board of Governors.

MAXIMUM ALLOWABLE SPREADS

Average spread	Maximum allowable spread
⅛ or less	¼
¼	½
⅜	¾
½	1

MAXIMUM ALLOWABLE SPREADS—Continued

Average spread	Maximum allowable spread
⅝	1
¾	1½
⅞	1½
1	1½
1⅛	1⅝
1¼	1¾
1⅜	1⅞
1½	2
1⅝	2
1¾	3
1⅞	3
2	3
2⅛	3
2¼	3
2⅜	3
2½	3
2⅝	4
2¾	4
2⅞	4

For an average spread of 3 or more, the maximum allowable spread is 125 percent of the average spread rounded to the next highest whole number.]

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Association is proposing an amendment to Part VI, Section 2 of Schedule D to the By-Laws regarding excess spread parameters for securities quoted in the NASDAQ system. The proposed rule applies to both NASDAQ and Consolidated Quotation Service ("CQS") securities[1] and establishes spread parameters no greater than 125% of the average of the narrowest three dealer spreads in each security. The NASD and its members are concerned that the current excess spread parameters in the NASDAQ market are excessively wide, in some instances permitting spreads of 150 percent of the "average dealer spread."

[1] The NASD is also modifying Section 2 to clarify that excess spread parameters apply to both NASDAQ and CQS securities.

The proposals modify the current rules in two ways—the excess spread parameters will be simplified with a uniform standard applied across the board, regardless of the average dealer spread in the security; the new parameters are based on the narrowest three dealer spreads rather than on all dealer spreads. As the chart in the current rules illustrates, the process to determine permissible spread parameters is cumbersome and unwieldy. Also, the current process uses all market maker quotes in the calculation of average dealer spread, which may give undue weight to spreads that may reflect one-sided buying or selling interest put in by a few market makers. On the other hand, the proposed rule is based on calculation of the three best dealer spreads (or the average spread if there are fewer than three dealers in the security), resulting in a more narrow permissible spread parameter for all market makers in the stock. After study of the impact on members of reducing spread parameters as described above, the NASD determined that the average of three dealers was an appropriate benchmark to utilize, with the caveat that a market maker would not be required to quote less than ¼ point spread in any security, regardless of the three narrowest spreads.

The NASD believes that an important beneficial effect of reducing the excess spread parameters may be to reduce dealer spreads overall, which would redound to the benefit of investors. NASDAQ market makers are required to maintain firm, continuous, two-sided quotations that are reasonably related to the transactions they are effecting. During rapidly moving markets, dealers may be paying more attention to the side of the market where their buy or sell interest lies, resulting in less than careful monitoring of the other side of their dealer quotes. In this fashion, spreads may widen and distort the true competitive nature of the NASDAQ market. Accordingly, the NASD is proposing a reduction in the excess spread parameters for NASDAQ and CQS securities to require market makers to input quotes no greater than 125% of the average of the three narrowest dealer spreads in the security, with the proviso that market makers will not be required to quote securities less than ¼ point spread.

The NASD believes the proposed rule change is consistent with section 15A(b)(6) of the Act. Section 15A(b)(6) requires that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and

equitable principals of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, 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 NASD believes that the proposed amendments reducing the excess spread parameters may reduce dealer spreads overall and may thereby result in narrower inside spreads, enhancing the quality of the NASDAQ market to the ultimate benefit of investors.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD 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 submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by January 7, 1993.

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. 92–30589 Filed 12–16–92; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–31579; File No. SR–NSCC–92–13]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Approving on an Accelerated Basis a Proposed Rule Change To Provide for the Automation of Payments of Commissions Associated With Mutual Fund Transactions

December 9, 1992.

On October 22, 1992, the National Securities Clearing Corporation ("NSCC") filed a proposed rule change (File No. SR–NSCC–92–13) with the Securities and Exchange Commission ("Commission") pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal was published in the **Federal Register** on November 27, 1992, to solicit comments from interested persons.[2] On November 17, 19, and 20, 1992, NSCC filed amendments to the proposed rule change.[3] No comments were received. As discussed below, this order approves the proposal on an accelerated basis.

I. Description

The proposed rule change changes the name Mutual Fund Settlement, Entry, and Registration Verification ("Fund/SERV") Service in Rule 52[4] to Mutual Fund Services and augments this program[5] by adding a new mutual fund service, the Mutual Fund Commissions Settlement ("Commissions") service, that will provide for the automation of payments of commissions owed in respect of mutual fund transactions.[6] The mechanism for the payment of commissions will be the same as that used for the payment of dividends through NSCC's Networking service.[7] The Commissions service also will permit Settling Members[8] to advise mutual funds of changes that the funds need to know about relative to commission payments. The proposed rule change also makes several technical modifications to change the organizational structure of Rule 52 and to codify existing practices.

Under the Commissions service, Fund Members (*e.g.*, broker-dealers acting as the principal underwriters for mutual funds)[9] will be able to transmit commission debit data to NSCC on a daily basis. The Fund Member must specify the commission amounts to be debited to its account the next day. If the next day is a New York bank holiday, the payment will be debited on the next day banks in New York are open for business. Commission payments, like dividend payments, will be made by Fund Members to NSCC in federal funds.[10] Settling Members (*e.g.*, retail broker-dealers) also will be able to transmit to Fund Members information relative to commission payouts.

NSCC's role in the Commissions service will be to transmit data between

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[1] 15 U.S.C. 78s(b) (1988).

[2] Securities Exchange Act Release No. 31473 (November 17, 1992), 57 FR 56395 [File No. SR–NSCC–92–13].

[3] The amendments to File No. SR–NSCC–92–13 were technical, non-substantive modifications to NSCC's Rule 52. See letter from Karen Saperstein, Associate General Counsel, NSCC, to Jerry Carpenter, Branch Chief, Division of Market Regulation ("Division"), Commission (November 17, 1992) and letters from Karen Saperstein to Jeffrey T. Brown, Staff Attorney, Division, Commission (November 19 and 20, 1992).

[4] NSCC Rule 52, Mutual Fund Services, is comprised of subsection A., Fund/SERV, subsection B., Networking, and subsection C., Commissions.

[5] NSCC has operated Fund/SERV since 1986. For a description of Fund/SERV, refer to Securities Exchange Act Release No. 26377 (December 28, 1988), 53 FR 52546 [File No. SR–NSCC–87–12] (order approving rule changes concerning Fund/SERV).

[6] Commissions is an optional service, so Participants may make commission settlements by other methods.

[7] Networking is a service which provides a centralized and automated facility for the exchange of customer account information between broker-dealers and mutual fund processors. For a description of Networking, refer to Securities Exchange Act Release No. 26376 (December 20, 1988), 53 FR 52544 [File No. SR–NSCC–88–08], (order approving Networking).

[8] The term Settling Member means a Rule 2 Member or a Rule 3 Non-Clearing Member. NSCC Rule 1.

[9] The term Fund Member is defined as any partnership, corporation or other organization, entity, or person, who is not a Member pursuant to Rule 2, but who is specified and has qualified pursuant to the provisions of Rule 51. NSCC Rule 1.

[10] Fund Members will pay commission and dividend amounts to NSCC through Fed wire transfers. NSCC will pay out the commission and dividend amounts to Settling Members by use of clearing house funds according to Rule 12 of NSCC's rules. There will be no netting of Fund Members' commission and dividend settlement debits with their purchase or redemption credits.

the two parties. Data will be transmitted in the same way that customer account data is transmitted under Networking. Each party that submits data through the Commissions service will be responsible for the accuracy of the information. NSCC, however, will provide Participants with technical assistance, including detailed programming information, to enable them to transmit data through the Commissions service and will have staff available to answer questions and handle problems that might arise.[11]

The proposed rule change also includes language to codify into the Networking subsection of NSCC's Rule 52 a currently utilized correction process. A similar correction process has been incorporated into the Commissions service subsection. Pursuant to the correction process, a Fund Member that submits incorrect dividend or commission data may submit correction information. If the Fund Member's correction with respect to dividend or commission payments results in a Settling Member being in a debit position, NSCC gives such Settling Member the ability to delete such correction. Such amounts are then settled outside the Commissions service. If the correction results in the Fund Member being in a debit position or in a credit position which is not deleted by a Settling Member, such corrected amounts are included with the Fund Member's and Settling Member's other settlement obligations, and payment is made in accordance with normal settlement practices.

NSCC has developed an identification code security system to ensure that only authorized users with valid identification codes may gain access to the Commissions service. In addition, all Commissions Participants may access the Commissions service on a dial-up basis or use dedicated telephone lines in order to transmit data to and receive data from the Commissions service. This is also true for Networking Participants.[12]

The proposed rule change also makes a number of technical changes. The name of Rule 52 has been changed to reflect the myriad of mutual fund services offered. A Settling Member may take advantage of Fund/SERV, Networking, or the Commissions service independently or in conjunction with one another. Accordingly, under the Rule 52 heading, each mutual fund service that can be accessed by Participants is under a different subheading. Should NSCC offer additional mutual fund services in the future, they also will be set forth under a new subheading in Rule 52.

The proposed rule change also redefines Fund/SERV Broker-Dealer as Mutual Fund/SERV Broker-Dealer to reflect that such entity may use any Rule 52 service. It also includes within the definition of Fund Member a notation that a Fund Member was previously referred to as a Fund/SERV Member. The notation is intended to ease cross-referencing the term Fund/SERV Member, which is used in the Fund Member's Agreement signed by mutual funds, with the term Fund Member, which is now used in NSCC's rules. Furthermore, most references throughout NSCC's rules to the Fund/SERV Service are being replaced with reference to the Mutual Fund Services to accommodate the Rule 52 name change referred to above. The exception to this is limited to subsection A where the continued reference to Fund/SERV is correct.[13]

The rule change also sets forth the fees to be charged for Commissions. NSCC will implement these fees effective January 1, 1993, for billing in February 1993.

NSCC believes the proposed rule change is consistent with the requirements of the Act in that it will promote the prompt and accurate clearance and settlement of mutual fund transactions. NSCC believes that it will better serve its Participants and enable them to better serve mutual fund purchasers by implementing the Commissions service.

II. Discussion

The Commission believes the proposal is consistent with the Act and specifically with section 17A of the Act.[14] Sections 17A(b)(3) (A) and (F) require that a clearing agency be organized and that its rules be designed to facilitate the prompt and accurate clearance and settlement of securities transactions.[15]

By providing Participants with a means of transacting mutual fund commission payments and communicating information relative to those commission payments through a centralized and automated system, the Commission service should enhance the efficiency of mutual fund commission transactions. Use of an automated system, as opposed to the exchange of hard-copy information, should increase the accuracy of the commission data transmitted between Fund Members, Settling Members, and mutual funds.

By codifying the correction mechanism currently in use in Networking into the Networking and Commission subsections of Rule 52, NSCC is providing its Participants with the ability to submit correction information through an automated system. This should reduce the likelihood of error in the payment of dividends and commissions.

The proposal provides certain safeguards, similar to those provided in Networking, to ensure the integrity of information sent through the Commissions system. NSCC has developed an identification code security system to ensure that only authorized users with valid identification codes may gain access to Commissions.

NSCC also 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 the notice of filing thereof. The Commission finds good cause for so approving because inclusion of the Commissions service, the Networking rule amendments, and the other portions of this filing enhance the prompt and accurate clearance and settlement of mutual fund transactions. Furthermore, because a similar service under Networking has been in operation for several years without problems or negative comment, the Commission does not expect to receive adverse comments on Commissions.

III. Conclusion

For the reasons stated above, the Commission finds that NSCC's proposal is consistent with section 17A of the Act.[16] The Commission also finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[17] that the proposed rule change (File No. SR–NSCC–92–13) be, and hereby is, approved on an accelerated basis.

[11] Telephone conversation between Karen Saperstein, Associate General Counsel, NSCC, and Jeffrey T. Brown, Staff Attorney, Division, Commission (November 19, 1992).

[12] Id.

[13] The changes in terms in the proposal will have no effect upon the Settling Member's Fund/SERV clearing fund requirements. A Settling Member's Fund/SERV clearing fund requirements are based on the settling dollar debits transacted through the Fund/SERV system. Telephone conversation between Karen Saperstein, Associate General Counsel, NSCC, and Jeffrey T. Brown, Staff Attorney, Division, Commission (December 1, 1992).

[14] 15 U.S.C. 78q–1 (1988).

[15] 15 U.S.C. 78q–1(b)(3) (A) and (F) (1988).

[16] 15 U.S.C. 78q–1 (1988).

[17] 15 U.S.C. 78s(b)(2) (1988).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-30590 Filed 12-16-92; 8:45 am]

BILLING CODE 8010-01-M

[Investment Company Act Release No. 19150; 812-8114]

The Salem Funds, et al.; Notice of Application

December 9, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: The Salem Funds ("Salem") and Federated Securities Corporation ("Federated").

RELEVANT ACT SECTIONS: Conditional order requested under section 6(c) for an exemption from the provisions of sections 2(a)(32), 2(a)(35), 22(c), and 22(d), and rule 22c-1.

SUMMARY OF APPLICATION: Applicants seek an order to permit them to assess a contingent deferred sales charge ("CDSC") on certain redemptions of shares, and to waive the CDSC under certain circumstances.

FILING DATE: The Application was filed on October 9, 1992. By supplemental letter dated December 8, 1992, Salem agreed to file an amendment during the notice period to make certain changes to its application. This notice reflects the changes to be made to the application by such further amendment.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 30, 1992, and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicants, Federated Investors Tower, Pittsburgh, Pennsylvania 15222-3779, Attention: C. Grant Anderson, Secretary.

FOR FURTHER INFORMATION CONTACT: James J. Dwyer, Law Clerk, at (202) 504-2920, or Elizabeth G. Osterman, Branch Chief, at (202) 272-3016 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations:

1. Salem is an open-end management investment company organized as a Massachusetts business trust. Salem currently consists of eight investment portfolios, five of which are equity and income portfolios, and three of which are money market portfolios. First Union National Bank of North Carolina serves as investment adviser for each of the portfolios. Federated is a registered broker dealer which serves as distributor to the portfolios. Certain of Salem's portfolios currently are offering multiple classes of shares pursuant to an existing order.[1]

2. Applicants request relief from the provisions of sections 2(a)(32), 2(a)(35), 22(c), and 22(d), and rule 22c-1 on behalf of themselves and any additional Salem portfolios and any future registered open-end management investment company advised by First Union National Bank of North Carolina or any of its affiliates for which Federated serves now or in the future as distributor (collectively, the "Funds") to permit the Funds to impose a contingent deferred sales charge ("CDSC") on certain shares that are redeemed within a specified period after the end of the calendar month in which the purchase order was accepted.[2] Applicants currently intend that the CDSC will be imposed for a period of six years. The CDSC will be imposed on the lesser of (i) the original cost of the redeemed shares, or (ii) the net asset value of the redeemed shares at the time of redemption. Applicants currently intend that the CDSC will be 4% if such shares are redeemed within the first year of purchase. The percentage will decrease each year until the end of the CDSC period.

3. No CDSC will be imposed on an amount which represents capital appreciation of shares, or reinvestment of dividends or capital gain distributions. In addition, in determining whether a CDSC is applicable, it will be assumed that a redemption is made first of shares not subject to the CDSC, and then other shares in the order of purchase.

4. No CDSC will be imposed on any shares purchased prior to the effective date of the requested order. In addition, any change to the specified terms of the CDSC will be disclosed in the prospectus of the applicable Fund. Any such change will not affect shares already issued unless such change results in terms more favorable to the shareholders, such as by reducing the amount of the CDSC or reducing the CDSC period.

5. All exchange privileges will be offered in compliance with section 11(a) of the Act and rule 11a-3 thereunder, or with the terms and conditions of any no-action letter or exemptive relief to which such privileges may be subject.

6. Applicants propose to waive the CDSC in the case of redemptions of shares: (a) Following the death or disability (as defined in the Internal Revenue Code of 1986, as amended) of a shareholder; (b) to the extent that the redemption represents a minimum required distribution from an IRA or other retirement plan to a shareholder who has reached age 70½; (c) owned by current employees of the investment adviser to the Funds or by current or former trustees of such Funds or other Funds advised by such investment adviser; (d) effected pursuant to a Fund's right to liquidate a shareholder's account if the aggregate net asset value of shares held in the account is less than the minimum account size; or (e) in connection with the combination of a Fund with any other investment company registered under the Act by merger, acquisition of assets, or by any other transaction.

Applicants' Condition

If the requested order is granted, Applicants expressly agree to comply with the provisions of proposed rule 6c-10 under the Act, Investment Company Act Release No. 16619 (Nov. 2, 1988), as such rule is currently proposed and as it may be reproposed, adopted, or amended.

[18] 17 CFR 200.30-3(a)(12) (1992).

[1] Investment Company Act Release Nos. 17645 (August 2, 1990) (notice) and 17715 (August 30, 1990) (order).

[2] Salem proposes that the shares subject to a CDSC will include a new class of shares ("Investment C") which Salem will offer through its equity and investment portfolios. The Investment C shares will be sold at net asset value without the imposition of a front-end sales load. Pursuant to Salem's existing 12b-1 distribution plan, Investment C shares will be subject to an annual charge of up to 0.75% per annum of the class's average daily net assets.

For the SEC, by the Division of Investment Management, under delegated authority

Margaret H. McFarland,

Deputy Secretary

[FR Doc. 92-30592 Filed 12-16-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-19152; 812-7746]

UST Master Funds, Inc., et al.; Notice of Application

December 10, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: UST Master Funds, Inc., UST Master Tax-Exempt Funds, Inc., United States Trust Company of New York, and UST Distributors, Inc.

RELEVANT 1940 ACT SECTIONS: Order requested under section 6(c) for an exemption from sections 18(f), 18(g), and 18(i).

SUMMARY OF APPLICATION: Applicants seek an exemptive order amending a prior order to permit the issuance and sale of three separate classes of shares in the current and future investment portfolios (the "Funds") of UST Master Funds, Inc. and UST Master Tax-Exempt Funds, Inc, (the "Companies"). One class of each Fund will bear an administrative service fee (the "Plan Shares"); one class of each Fund will bear a distribution fee (the "Distribution Shares"); and one class of each fund will not bear either a service or distribution fee (the "Non-Plan Shares").

FILING DATES: The application was filed on July 1, 1991, and amendments to the application were filed on February 14, September 14, and November 25, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 5, 1993 and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of the date of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549; the Companies, One Boston Place, Boston, Massachusetts 02108; United States Trust Company of New York, 114 West 47th Street, 10th Floor, New York, New York 10036; and UST Distributors, Inc., 156 West 56th Street, suite 1902, New York, New York 10019.

FOR FURTHER INFORMATION CONTACT: H.R. Hallock, Jr., Special Counsel, at (202) 272-3030, or Barry D. Miller, Senior Special Counsel, at (202) 272-3018 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. Each Company is registered as a management investment company under the 1940 Act. UST Master Funds, Inc. ("Master Funds") offers shares in seven investment portfolios: The Money, Government Money, Treasury Money, Equity, Managed Income, Income and Growth, and International Funds. UST Master Tax-Exempt Funds, Inc. ("Master Tax-Exempt Funds") offers five investment portfolios: The Short-Term, Intermediate-Term, Long-Term, California Intermediate-Term, and New York Intermediate-Term Tax-Exempt Funds.

2. United States Trust Company of New York ("U.S. Trust"), a New York bank and trust company, is the Companies' investment adviser, and UST Distributors, Inc. ("UST") is the Companies' distributor. Shares are sold to customers maintaining qualified accounts at U.S. Trust, and its affiliates and correspondent banks, as well as to other institutional and individual investors.

3. The Money, Government Money, Treasury Money, and Managed Income Funds of Master Funds and all five portfolios of Master Tax-Exempt Funds declare their net investment income on a daily basis (the "Daily Dividend Funds"). The Equity, Income and Growth, and International Funds declare their net investment income quarterly. The Money, Government Money, Treasury Money and Short-Term Tax-Exempt Funds use the amortized cost method of valuation, and their shares are sold without a sales charge. Shares in the remaining Funds are sold with a front-end sales load.

4. An exemptive order issued on April 24, 1990 (the "Prior Order") authorized each Company to issue and sell separate classes of Plan Shares within each Daily Dividend Fund. Investment Company Act Release No. 17460. The Prior Order permitted Plan Shares to be sold under the Companies' non-12b-1 Shareholder Services Plans ("Shareholder Services Plans") to various institutional investors ("Service Organizations") that agreed to provide certain administrative shareholder support services to their customers who beneficially own Plan Shares in consideration of a fee currently not exceeding .40% (annualized) of the average daily net assets of each Fund's outstanding Plan Shares.

5. The Companies intend to adopt Distribution Plans (collectively with the Shareholder Services Plans, the "Plans") to enable them to reach customers of various financial intermediaries, particularly broker-dealers, that can provide various distribution services in connection with the sale of Distribution Shares. Accordingly, Applicants seek to amend the Prior Order to permit the issuance and sale of three separate classes of shares in each Fund, each of which will bear transfer agency expenses attributable to that class, one of which (the Plan Shares) will also bear a shareholder administrative support service fee, one of which (the Distribution Shares) will also bear a distribution fee, and one of which (the Non-Plan Shares) will not bear either a shareholder administrative support service fee or distribution fee.

6. The Distribution Plans would provide for the payment of expenses incurred with the distribution of Distributions Shares, including, without limitation, advertising and marketing expenses, printing costs for new prospectuses and sales literature, and payments to broker-dealers and others for distribution assistance. Payments by a Fund under the proposed Distribution Plans currently are not expected to exceed .75% (annualized) of the average daily net asset value of the Fund's outstanding Distribution Shares. The Distribution Plans and all related agreements will be subject to all the provisions of rule 12b-1 under the 1940 Act. In addition, the Companies shall comply with Sections (b) and (d) of Article III, Section 26 of the National Association of Securities Dealers, Inc.'s Rules of Fair Practice as they relate to the maximum amount of asset-based sales charges that may be imposed by an investment company, when and in the form (as amended from time to time) the provisions of such Rules relating to such charges become effective, and for as long as they remain in effect.

7. The Companies believe that by offering Plan, Non-Plan, and Distribution Shares, they will be able to

achieve added flexibility in meeting the service and investment needs of shareholders and future investors. The Companies also believe that the expenses incurred by a class of Plan Shares or Distribution Shares should be appropriately borne by the shareholders of such class because the benefits of the Plans will accrue to them. UST believes, however, that it would be inefficient, and in some cases economically or operationally unfeasible, to organize a separate investment portfolio for each class of Plan Shares and Distribution Shares. Not only would the Companies incur unnecessary accounting and bookkeeping costs in organizing and operating such additional investment portfolios, but management of the additional investment portfolios might be hampered. For example, unless the new investment portfolios grew at a sufficient rate and to a sufficient size, they could face liquidity and diversification problems that would prevent them from producing a favorable yield.

8. Each share in a Fund, regardless of class, will have identical voting, dividend, liquidation and other rights, powers, restrictions, limitations, qualifications, designations, and terms and conditions, except that: (1) Each will have different class designations; (2) the classes of Plan Shares and Distribution Shares each will bear individually the expenses incurred pursuant to the terms of the Plan applicable to that class ("Plan Payments"); (3) each class of Plan, Non-Plan, and Distribution Shares will bear transfer agency expenses directly attributable to it; and (4) only the holders of Distribution Shares or Plan Shares of the class involved would be entitled to vote on matters pertaining to the Distribution Plan or Shareholder Services Plan, respectively, and any related agreements, relating to such class.

9. Because of Plan Payments and transfer agency expenses, the net income of (and dividends payable to) each class would be somewhat different than the net income of (and dividends payable to) the other classes in the same Fund. Similarly, because of such Plan Payments and transfer agency expenses, to the extent a Fund that uses market valuation had undistributed net income the net asset value of its classes would differ. Dividends paid to each class in a Fund will, however, be declared and paid on the same days and at the same times and, except as noted with respect to the Plan Payments and transfer agency expenses, will be determined in the same manner and paid in the same amounts.

10. The Plan, Non-Plan, and Distribution Shares in each Fund may also differ with respect to exchange privileges. It is expected that shares of a class of one Fund would only be exchangeable for shares of the similar class of another Fund.

Applicants' Legal Analysis

1. Applicants request an order, pursuant to section 6(c) of the 1940 Act, amending the Prior Order to permit the proposed issuance and sale of Plan, Non-Plan and Distribution Shares in each Fund as described above (the "Multi-Class System") to the extent that such issuance and sale might be deemed: (i) To result in a "senior security" within the meaning of section 18(g) of the 1940 Act that would be prohibited by section 18(f)(1) of the 1940 Act; and (ii) to violate the equal voting provisions of section 18(i) of the 1940 Act.

2. The issuance and sale of the Plan and Distribution Shares in each Fund may result in stock of a class having "priority over [another] class as to distribution of assets or payment of dividends" within the meaning of section 18(g) of the 1940 Act and having unequal voting rights because holders of the Distribution Shares and Plan Shares would enjoy exclusive voting rights with respect to matters concerning the pertinent Distribution Plan or Shareholder Services Plan, respectively.

3. In support of the requested order, Applicants assert that the proposed allocation of expenses and voting rights in the manner described in equitable and will not discriminate against any group of shareholders. Investors purchasing Plan and Distribution Shares and receiving the services provided under the respective Plans and the transfer agency services associated with the particular class of shares would bear the costs associated with such services, but would also enjoy exclusive shareholder voting rights with respect to matters affecting the respective Plans. Investors purchasing Non-Plan Shares would not receive services provided under the respective Plans nor bear Plan Expenses or exercise voting rights with respect to such Plans or their related agreements. However, they would bear transfer agency expenses directly attributable to the particular class of Non-Plan Shares.

4. Applicants also assert that the proposed arrangement does not involve borrowings and does not affect the Companies' existing assets or reserves. Nor, it is asserted, will the proposed arrangement increase the speculative character of the shares in a Fund, because each class will participate *pro rata*, in proportion to the net asset value of the class, in all of the Fund's income and all of the Fund's expenses (with the exception of Plan Payments and transfer agency expenses). Accordingly, Applicants submit that the exemptive standards established by section 6(c) have been met in that the requested exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

Conditions to the Requested Relief

Applicants agree that the following conditions may be imposed in the requested amended order in substitution for the conditions in the Prior Order:

1. Each class of shares of each Fund of the Companies will represent interests in the same portfolio of investments of the Fund and be identical in all respects, except as set forth below. The only differences between the classes of shares of a Fund will relate solely to: (a) The Plan Payments, transfer agency expenses, and any other incremental expenses subsequently identified that should be properly allocated to a class of shares and which are approved by the SEC pursuant to an amended order; (b) the designation of the class of shares; (c) the different exchange privileges of the class of shares; and (d) the voting rights on matters which pertain to the Distribution and Shareholder Services Plans and related agreements.

2. The directors of each Company, including a majority of the independent directors, will approve the Multi-Class System for the pertinent Company. The minutes of the meetings of the directors of each Company regarding the deliberations of the directors with respect to the approvals necessary to implement the Multi-Class System for the pertinent Company will reflect in detail the reasons for the directors' determination that the proposed Multi-Class System is in the best interests of both the Company and its shareholders.

3. On an ongoing basis, the directors of each Company, pursuant to their fiduciary responsibilities under the 1940 Act and otherwise, will monitor the pertinent Company for the existence of any material conflicts between the interests of the classes of shares of a Fund. The directors, including a majority of the independent directors, shall take such action as is reasonably necessary to eliminate any such conflicts that may develop. Each Company's adviser and distributor will be responsible for reporting any potential or existing conflicts to the directors. If a conflict arises, the

particular Company's adviser and distributor at their own cost will remedy such conflict up to and including establishing a new registered management investment company.

4. The directors of each Company will receive quarterly and annual statements concerning distribution and shareholder servicing expenditures for Plan and Distribution Shares complying with paragraph (b)(3)(ii) of rule 12b–1, as it may be amended from time to time. In the statements, only expenditures properly attributable to the sale or servicing of a particular class of shares will be used to justify any distribution or servicing fee charged to that class. Expenditures not related to the sale or servicing of a particular class will not be presented to the directors to justify any fee attributable to that class. The statements, including the allocations upon which they are based, will be subject to the review and approval of the independent directors in the exercise of their fiduciary duties.

5. Dividends paid by the Company with respect to each class of a Fund, to the extent any dividends are paid, will be calculated in the same manner, at the same time, on the same day, and will be in the same amount as dividends paid by the Company with respect to the other class in the same Fund, except that any Plan Payments and transfer agency expenses relating to a class will be borne exclusively by that class.

6. The methodology and procedures for calculating the net asset value and dividends and distributions of each class of a Fund with a Multi-Class System and the proper allocation of expenses among those classes has been reviewed by an expert (the "Expert") who has rendered a report to each Company, which has been provided to the staff of the SEC, that such methodology and procedures are adequate to ensure that such calculations and allocations will be made in an appropriate manner. On an ongoing basis, the Expert, or an appropriate substitute Expert, will monitor the manner in which the calculations and allocations are being made and, based on such review, will render at least annually a report to each Company that the calculations and allocations for the particular Company are being made properly. The reports of the Expert shall be filed as part of the periodic reports filed with the SEC pursuant to sections 30(a) and 30(b)(1) of the 1940 Act. The work papers of the Expert with respect to such reports, following request by the particular Company (which the Company agrees to provide), will be available for inspection by the SEC staff upon the written request to the particular Company for such work papers by a senior member of the Division of Investment Management or a regional office of the SEC. Authorized staff members would be limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director and any Regional Administrators or Associate and Assistant Administrators. The initial report of the Expert is a "Special Purpose" report on the "Design of a System" and the ongoing reports will be "Special Purpose" reports on the "Design of a System and Certain Compliance Tests" as defined and described in SAS No. 44 of the AICPA, as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

7. The Companies have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividends and distributions of each class of shares of a Fund with a Multi-Class System and the proper allocation of expenses among such class of shares and this representation has been concurred with by the Expert in the initial report referred to in condition 6 above and will be concurred with by the Expert, or an appropriate substitute Expert, on an ongoing basis at least annually in the ongoing reports referred to in condition 6 above. The particular Company will take immediate corrective measures if this representation is not concurred in by the Expert or appropriate substitute Expert.

8. The prospectus for each Fund with a Multi-Class System will contain a statement to the effect that a salesperson and any other person entitled to receive compensation for selling or servicing Company shares may receive different compensation with respect to one particular class of shares over another class in the same Fund.

9. The Companies' distributor will adopt compliance standards as to when each class of Plan, Non-Plan, and Distribution Shares may appropriately be sold to particular investors. Applicants will require all persons selling the Plan, Non-Plan, and Distribution Shares to agree to conform to such standards.

10. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the directors of each Company with respect to the Multi-Class System will be set forth in guidelines which will be furnished to the directors.

11. Each Fund will disclose the respective expenses, performance data, distribution arrangements, services, fees, sales loads, deferred sales loads, and exchange privileges applicable to Plan, Non-Plan and Distribution Shares of the same Fund in every prospectus for any such Fund, regardless of whether such shares are offered through each prospectus. Each Fund will disclose the respective expenses and performance data applicable to all such shares of the same Fund in every shareholder report for any such Fund. To the extent any advertisement or sales literature describes the expenses or performance data applicable to any such shares, it will also disclose the respective expenses and/or performance data applicable to all such shares in the same Fund. The information provided by Applicants for publication in any newspaper or similar listing of a Fund's net asset value and public offering price will present each class of such shares in the same Fund separately.

12. Each agreement under a Shareholder Services Plan will contain a representation by the Service Organization that any compensation payable to the Service Organization in connection with the investment of its customers' assets in the pertinent Company (a) will be disclosed by it to its customers, (b) will be authorized by its customers, and (c) will not result in an excessive fee to the Service Organization.

13. Each Shareholder Services Plan will be adopted and operated in accordance with the procedures set forth in rule 12b–1 (b) through (f) as if the expenditures made thereunder were subject to rule 12b–1, except that shareholders will not enjoy the voting rights specified in rule 12b–1. In evaluating a Shareholder Services Plan, the directors will specifically consider whether (a) the Shareholder Services Plan is in the best interest of the applicable classes and their respective shareholders, (b) the services to be performed by the Service Organizations pursuant to the Shareholder Services Plan are required for the operation of the applicable classes, (c) the Service Organizations can provide services at least equal, in nature and quality, to those provided by others, including the pertinent Company, providing similar services, and (d) the service fees for such services are fair and reasonable in light of the usual and customary charges made by other entities, especially non-affiliated entities, for services of the same nature and quality.

14. Each agreement that is entered into pursuant to a Shareholder Services Plan will provide that, in the event an issue pertaining to the Shareholder Services Plan is submitted for

shareholder approval, the Service Organization will vote any shares held for its own account in the same proportion as the vote of those shares held for its customers' accounts.

15. Applicants acknowledge that the grant of the exemptive order requested by the application will not imply SEC approval, authorization, or acquiescence in any particular level of payments that the Funds may make pursuant to a Plan in reliance on the exemptive order.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–30591 Filed 12–16–92; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: City of Lafayette, Lafayette Parish, LA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Withdrawal of Draft Environmental Impact Statement.

SUMMARY: The FHWA is issuing this notice to advise the public that the Draft Environmental Impact Statement (DEIS) prepared for the proposed highway project in Lafayette, Louisiana has been withdrawn.

FOR FURTHER INFORMATION CONTACT: Mr. Robert E. Hollis, Technical Operations Manager, Federal Highway Administration, P.O. Box 3929, 750 Florida Street, Baton Rouge, Louisiana 70821 or Public Hearing and Environmental Engineer, Louisiana Department of Transportation and Development, P.O. Box 94245, Baton Rouge, Louisiana 70804–9245.

SUPPLEMENTARY INFORMATION: A DEIS was prepared on a proposal to improve U.S. Routes 90 and 167 (Evangeline Thruway) in Lafayette, Louisiana. The proposed improvement, called the I–49 Connector, would involve an upgrade of the existing transportation corridor between the Lafayette Regional Airport and just north of the existing I–10/I–49 interchange, a distance of about 5½ miles. A final environmental impact statement will not be prepared because a decision has been made not to advance the project at this time.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: December 11, 1992

Paul W. Pool,

FHWA Assistant Division Administrator.

[FR Doc. 92–30598 Filed 12–16–92; 8:45 am]

BILLING CODE 4910–22–M

Maritime Administration

[Docket No. S–894]

Puerto Rico Maritime Shipping Authority; Application for Permission Under Section 506 of the Merchant Marine Act, 1936, as Amended, to Operate in the Domestic Trade

Notice is hereby given that Puerto Rico Maritime Shipping Authority (PRMSA) by application dated December 10, 1992, as amended by letter dated December 11, 1992, has applied for written permission under section 506 of the Merchant Marine Act, 1936, as amended (Act), for the temporary transfer of one Lancer-class vessel, the MAYAGUEZ or a substitute vessel, which PRMSA owns, to a purely domestic service during calendar year 1993 between Puerto Rico and ports along the U.S. Atlantic and Gulf Coasts. Section 506 permits the temporary transfer for up to six months of construction-differential subsidy (CDS) built vessels "whenever the Secretary determines that such transfer is necessary or appropriate to carry out the purposes of the Act." Consent by MARAD is to be conditioned upon payment to MARAD, upon such terms as MARAD may prescribe, of "an amount which bears the same proportion to the CDS paid by the Secretary as such temporary period bears to the entire economic life of the vessel."

PRMSA states that when operating its five Lancer fleet, it cannot keep the vessels in schedule if it includes Charleston as a port of call unless one vessel is exclusively dedicated to domestic trade. Otherwise, deployment requirements, regularity of service, speed and loading limitations would require PRMSA to delete Charleston as a regular port of call. It was for similar reasons that PRMSA requested a waiver which was granted by the Maritime Administration in April 1992. That waiver has been utilized in providing a service to Charleston.

PRMSA points out that under prior MARAD rulings, namely Docket S–830, while the applicant has the burden of showing that its application furthers the purposes and policies of the Act, opponents to a section 506 waiver application have the burden of showing that a proposed domestic service with a waiver "would have a substantial detrimental effect on existing domestic service. . " *Ibid*, p. 13. PRMSA contends that even such a competitive impact "alone does not preclude grant of section 506 permission" *Ibid*, p. 15, since the overall impact on purposes and policies must be measured.

PRMSA emphasizes these points because considerations relating to port service result in the absence of any competitive effect whatsoever from the grant of this waiver application. PRMSA states that, at the present time, there is no U.S.-flag service to San Juan from the port of Charleston other than that presently provided by PRMSA. PRMSA believes that thus grant of the waiver serves the important purpose of promoting commerce from and to that port, with all the ramifications well known to the administration in respect of this nation's policies of port promotion, see section 8 of the Merchant Marine Act, 1920, 46 U.S.C. 867. Because no other carrier serves Charleston, there is no competitive effect whatsoever upon other carriers by virtue of granting the waiver in respect of service at that port. PRMSA indicates that, granting of this waiver will not result in any increased service at any other port, will not increase the frequency of vessels calls, will not increase their cargo carrying capacity from any port but will allow the continuation of their existing service to the port of Charleston. PRMSA believes that thus no competitor of PRMSA in the domestic trades can claim any harm whatsoever resulting from the grant of this application.

PRMSA requests that, in view of these considerations, and pursuant to MARAD guidelines enunciated in the above-cited case, that its application be granted.

Although publication of a Notice with respect to PRMSA's request for permission under section 506 is not required by statute, the Maritime Administration believes that it is appropriate to provide an opportunity for interested parties to comment on PRMSA's application.

Any person, firm, or corporation having any interest in the application for section 506 permission and desiring to submit comments concerning the application must file written comments in triplicate with the Secretary, Maritime Administration, room 7300, Nassif Building, 400 Seventh Street SW., Washington, DC 20590, by the close of business on December 24, 1992. The Maritime Administration, as a matter of discretion, will consider any

comments submitted and take such action with respect thereto as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 20.800 Construction-Differential Subsidies (CDS)).

Dated: December 15, 1992.

By Order of the Maritime Administrator.

James E. Saari,

Secretary.

[FR Doc. 92-30746 Filed 12-16-92; 8:45 am]

BILLING CODE 4910-81-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

December 11, 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.

Office of Thrift Supervision

OMB Number: 1550-0007
Form Number: OTS Forms 159-E and 159-F
Type of Review: Extension
Title: Application for Conversion from State Chartered Institution to Federally Chartered Institution
Description: Section 5(i) of the Home Owners' Loan Act and 12 CFR 543.8 and 552.2 require the OTS to act on requests by state chartered institutions to convert to a Federal charter. OTS forms 159-E and 159-F are used to evaluate whether or not conversion applicants satisfy appropriate eligibility requirements for a Federal charter and whether the institution will operate in accordance with OTS regulations and policies subsequent to the conversion.
Respondents: Businesses or other for-profit
Estimated Number of Respondents: 40
Estimated Burden Hours Per Respondent: 4 hours
Frequency of Response: Other (when application is submitted)
Estimated Total Reporting Burden: 160 hours

OMB Number: 1550-0016
Form Number: OTS Form 710
Type of Review: Revision
Title: Merger Application
Description: Information on OTS Form 710 is evaluated by the OTS to determine whether the proposed transaction complies with applicable state and Federal laws, OTS regulations and policy, and will not have an adverse effect on the risk exposure of the Savings Association Insurance Fund (SAIF). These applications include merger transactions with thrifts and commercial banks and transfers of assets/liabilities from banks to thrifts.
Respondents: Businesses or other for-profit
Estimated Number of Respondents: 90
Estimated Burden Hours Per Respondent: 36 hours.
Frequency of Response: Other (when application is filed)
Estimated Total Reporting Burden: 3,240 hours

OMB Number: 1550-0025
Form Number: OTS Form 1314
Type of Review: Revision
Title: Purchase of Branch Office(s)/ Transfer of Assets and/or Liabilities
Description: Information provided by OTS Form 1314 is evaluated to determine whether the proposed assumption of liabilities and/or transfer of assets transaction complies with applicable laws, regulations and policy, and will not have an adverse effect on the risk exposure to the insurance fund.
Respondents: Businesses or other for-profit
Estimated Number of Respondents: 180
Estimated Burden Hours Per Respondent: 4 hours, 52 minutes
Frequency of Response: Other (information submitted each time a transfer of assets and/or liabilities is proposed)
Estimated Total Reporting Burden: 876 hours

OMB Number: 1550-0059
Form Number: None
Type of Review: Extension
Title: Capital Distributions
Description: Provides uniform treatment for capital distributions made by thrift institutions. Ensures adequate supervision of savings associations' distributions of capital, fostering safety and soundness of the thrift industry.
Respondents: Businesses or other for-profit
Estimated Number of Respondents: 1,050
Estimated Burden Hours Per Respondent: 4 hours
Frequency of Response. Other (when required transactually)
Estimated Total Reporting Burden 4,200 hours

OMB Number: 1550-0061
Form Number: None
Type of Review: Extension
Title: Outside Borrowings
Description: Information is collected from savings associations that do not meet capital requirements. These institutions must give 10 days prior notification before making long term borrowings. Information is used to monitor safety and soundness of institutions not meeting their applicable capital requirements.
Respondents: Businesses or other for-profit
Estimated Number of Respondents: 20
Estimated Burden Hours Per Respondent: 4 hours
Frequency of Response: Other (upon application)
Estimated Total Reporting Burden: 80 hours

Clearance Officer: Colleen Devine, (202) 906-6025, Office of Thrift Supervision, 2nd Floor, 1700 G Street, NW., Washington, DC 20552.
OMB Reviewer: Gary Waxman, (202) 395-7340, Office of Management and Budget, room 3208, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 92-30651 Filed 12-16-92; 8:45 am]

BILLING CODE 4810-25-M

Office of the Secretary

List of Countries Requiring Cooperation With an International Boycott

In order to comply with the mandate of section 999(a)(3) of the Internal Revenue Code of 1986, the Department of the Treasury is publishing a current list of countries which may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986).

On the basis of the best information currently available to the Department of the Treasury, the following countries may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986):

Bahrain
Iraq
Jordan
Kuwait
Lebanon

Libya
Oman
Qatar
Saudi Arabia
Syria
United Arab Emirates
Yemen, Republic of.

Dated: December 10, 1992.

Alan J. Wilensky,

Deputy Assistant Secretary for Tax Policy.

[FR Doc. 92–30650 Filed 12–16–92; 8:45 am]

BILLING CODE 4810–25–M

Customs Service

Petitioner's Desire To Contest Decision Denying Domestic Interested Party Petition Concerning the Classification of Certain Turbines and Generators Entered Together

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of petitioner's desire to contest decision on domestic interested party petition.

SUMMARY: This document advises the public of the desire of an interested party to contest Customs decision denying its petition requesting reclassification of certain turbines and generators entered together.

DATES: December 17, 1992.

FOR FURTHER INFORMATION CONTACT: Chris M. Schmitt, Metals and Machinery Classification Branch, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, DC 20229 (202–566–2938).

SUPPLEMENTARY INFORMATION:

Background

On May 26, 1992, a notice was published in the **Federal Register** (57 FR 21914), stating that Customs had received a petition on behalf of a domestic interested party, filed under section 516, Tariff Act of 1930, as amended (19 U.S.C. 1516), and part 175, Customs Regulations (19 CFR part 175). The petition challenged Customs HQ Rulings 087074 (November 21, 1991) and HQ 088013 (November 21, 1991), which held that certain turbines and generators entered together were classified in Heading 8502, Harmonized Tariff Schedule of the United States (HTSUS).

In HQ 087074 (November 21, 1991), Customs held that gas turbines and electric generators, entered together, were classified as generating sets in subheading 8502.30.00, HTSUS, subject to a Column 1 rate of duty of 3 per cent, *ad valorem*. The turbines and generators, subsequent to entry, were connected by means of couplings on their respective shafts which were bolted together to form a single shaft. The turbine-generator machines were described as single shaft (3,600 rpm), single casing machines consisting of one 17-stage compressor and one 4-stage turbine.

In HQ 088013 (November 21, 1991), Customs held that steam turbines and electric generators, entered together, were classified as generating sets in subheading 8502.30.00, HTSUS, subject to a Column 1 rate of duty of 3 per cent, *ad valorem*. Subsequent to entry, the rotors or shafts of the turbines and generators were connected by means of a gear reduction unit or box. The turbine rotor of one model rotated between 5,500 and 11,000 rpm, and the rotor of the generator rotated at 3,600 rpm. The turbine rotor of the second model rotated at 6,045 rpm, and the rotor of the generator rotated at 3,600 rpm.

In HQ 087074 and HQ 088013, Customs found that the design features of the machines insured that the connected shafts rotated at identical speeds, and that the vibrational behavior, bearing loads and other features of the machines must be matched. Because the units were commonly bought and sold together, were commercially regarded as generating sets, and possessed design features that indicated they would be permanently attached to one another, we concluded that they were designed to be mounted together as one unit for the purposes of Heading 8502.

The petitioner contended that the turbines and generators were not classified as generator sets in Heading 8502, and that the turbines and generators should be classified separately in Headings 8411, 8406 or 8501, HTSUS. The petitioner's arguments included that the products did not have sufficient structural integration, were stand alone machines that were not mounted as one unit or fitted together to form a whole, and were incomplete and unassembled machines that were not classifiable in Heading 8502 pursuant to the HTSUS General Rules of Interpretation.

The petitioner contended that even when entered together, the turbines and generators should be classified separately, with large scale gas turbines classified in subheading 8411.82.80, HTSUS, subject to a Column 1 rate of duty of 5 per cent *ad valorem*, large scale steam turbines classified in subheading 8406.19.10, HTSUS, subject to a Column 1 rate of duty of 7.5 per cent *ad valorem*, and large scale generators classified in subheading 8501.64.00, HTSUS, subject to a Column 1 rate of duty of 3 per cent *ad valorem*.

Six of the seven comments received in response to the **Federal Register** notice of May 26, 1992, supported the correctness of the current classification and supported denial of the petition, while the remaining comment supported the petition and the requested reclassification.

Decision on Petition and Notice of Petitioner's Desire To Contest

After careful analysis of the comments received in response to the notice and further review of the matter, the petitioner was informed, by letter dated September 10, 1992, that the classification determinations in HQ 087074 and 088013 were correct, and that the petition was denied.

In response to Customs decision to deny the petition, the petitioner filed notice on October 9, 1992, of its desire to contest Customs decision in accordance with section 516(c), Tariff Act of 1930, as amended (19 U.S.C. 1516(c)), and § 175.23, Customs Regulations (19 CFR 175.23). The petitioner's notice states the desire to contest the classification of merchandise which is similar to the merchandise (finished or unfinished), at issue in HQ 087074 and HQ 088013. However, the petitioner's notice states that there is no desire to contest the classification of merchandise which is similar to the "ATPS" product at issue in HQ 088013.

Customs has reconsidered the matter in light of the petitioner's letter, but remains of the opinion that its September 10, 1992, decision affirming the classification determinations in HQ 087074 and HQ 088013, is correct. That decision will stand in the absence of a contrary judgment rendered by the United States Court of International Trade, the United States Court of Appeals for the Federal Circuit or the United States Supreme Court.

Authority

This notice is published under the authority of section 516(c), Tariff Act of 1930, as amended (19 U.S.C. 1516(c)), and § 175.24, Customs Regulations (19 CFR 175.24).

Drafting Information

The principal author of this document was Chris M. Schmitt, Metals and Machinery Classification Branch, Office of Regulations and Rulings, U.S. Customs Service. Personnel from other

Customs offices participated in its development.

Michael H. Lane,

Acting Commissioner of Customs.

Approved: November 24, 1992.

Peter K. Nunez,

Assistant Secretary of the Treasury.

[FR Doc. 92–30485 Filed 12–16–92; 8:45 am]

BILLING CODE 4820–02–M

Office of Thrift Supervision

[AC–82: OTS No. 2062]

Oak Hills Savings & Loan Co., F.A., Cincinnati, OH; Approval of Conversion Application

Notice is hereby given that on December 3, 1992, the Assistant Director for Supervisory Operations, Office of Thrift Supervision, or his designee, acting pursuant to delegated authority, approved the application of Oak Hills Savings and Loan Company, F.A., Cincinnati, Ohio, to convert to the stock form of organization. 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 Central Regional Office, Office of Thrift Supervision, 111 East Wacker Drive, suite 800, Chicago, Illinois 60601–4360.

Dated: December 11, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92–30527 Filed 12–16–92; 8:45 am]

BILLING CODE 6720–01–M

[AC–81: OTS No. 1195]

Park View Federal Savings & Loan Association, Cleveland, OH; Final Action; Approval of Voluntary Supervisory Conversion Application

Notice is hereby given that, on December 3, 1992, the Deputy Director for Washington Operations approved the application of Park View Federal Savings and Loan Association, Cleveland, Ohio, for permission to convert to the stock form of organization, in a voluntary supervisory conversion in connection with a change of control application. Copies of the applications are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and the Central Regional Office, Office of Thrift Supervision, 111 East Wacker Drive, suite 800, Chicago, Illinois 60601.

Dated: December 11, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92–30528 Filed 12–16–92; 8:45 am]

BILLING CODE 6720–01–M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 243
Thursday, December 17, 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 MINE SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 10:00 a.m., Wednesday, December 16, 1992.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act on the following:

1. *Clifford Meek* v. *Essroc Corporation*, Docket No. LAKE 90–132–DM. (Issues include whether the judge erred in concluding that Essroc discriminated against Meek in violation of 30 U.S.C. 815(c).)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs.

It was determined by a unanimous vote of Commissioners that this meeting be held at this time, and no earlier announcement of the meeting was possible.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen, (202) 653–5629/(202) 708–9300 for TDD Relay 1–800–877–8339 for toll free.

Dated: December 10, 1992.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 92–30698 Filed 12–15–92; 9:51 am]

BILLING CODE 6735–01–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, December 17, 1992.

PLACE: Room 600, 1730 K Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Peabody Coal Company*, Docket No. KENT 91 179–R, etc. (Issues include whether the judge erred in holding that Peabody violated 30 C.F.R. § 75.316 for operating mines without an approved ventilation plan.)

Any persons attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(e).

CONTACT PERSON FOR MORE INFO: Jean Ellen (202) 653–5629/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Dated: December 10, 1992.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 92–30699 Filed 12–15–92; 9:51 am]

BILLING CODE 6735–01–M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of December 14, 1992.

A closed meeting will be held on Wednesday, December 16, 1992, at 2:30 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Schapiro, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Wednesday, December 16, 1992, at 2:30 pm., will be:

Institution of injunctive actions.

Institution of administrative proceedings of an enforcement nature.

Settlement of administrative proceeding of an enforcement nature.

Opinions.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Holly Smith at (202) 272–2100.

Dated: December 14, 1992.

Jonathan G. Katz,

Secretary.

[FR Doc. 92–30795 Filed 12–15–92; 2:46 pm]

BILLING CODE 8010–01–M

Corrections

Federal Register
Vol. 57, No. 243
Thursday, December 17, 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 COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 671

[Docket No. 921105-2305]

King and Tanner Crab Fisheries of the Bering Sea and Aleutian Islands

Correction

In rule document 92-29289 beginning on page 57112 in the issue of Thursday, December 3, 1992, make the following corrections:

1. On page 57114, in the third column, in the first full paragraph, in the fourth line, "not" should read "pot".

§ 671.2 [Corrected]

2. On page 57115, in the third column, in § 671.2, in the third line, "§ 620 2" should read "§ 620.2".

§ 671.20 [Corrected]

3. On page 57115, in the third column, in § 671.20, in the sixth line, "*(Chionoecetes*" was misspelled.

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[PS-55-89]
RIN 1545-AN82

General Asset Accounts Under the Accelerated Cost Recovery System

Correction

In proposed rule document 92-20910 beginning on page 39374 in the issue of Monday, August 31, 1992, make the following corrections:

1. On page 39375, in the 3rd column, in the 11th line "in" should read "is".

§ 1.168(i)-1 [Corrected]

2. On page 39376, in the third column, in § 1.168(i)-1(c)(1)(iv), in the first line "give" should read "gives".

3. On the same page, in the third column, in § 1.168(i)-1(c)(iv)(2), in the heading, "*assets*" should read "*asset*", in the fourth line "of this rule" should read "of this section", and in the ninth line "one general assets" should read "one general asset".

4. On page 39378, in the first column, in § 1.168(i)-1(e)(3)(i), in the Example, paragraph (iii), in the third line from the bottom "$0 $10,000" should read "$0-$10,000".

5. On the same page, in the same column, in § 1.168(i)-1(e)(3)(ii)(A), in the sixth line "of this section a" should read "of this section), a".

6. On the same page, in the second column, in § 1.168(i)-1(e)(3)(ii)(D), in the Example, paragraph (i), in the fourth line "$150,000 alone and" should read "$150,000 and".

7. On the same page, in the 3rd column, in § 1.168(i)-1(e)(3)(ii)(D), in the Example, paragraph (iv), in the 1st line "less" should read "loss", in the 7th line, "in" should read "is", and in the 14th line, "$2200" should read "$2,200".

8. On the same page, in the 3rd column, in § 1.168(i)-1(e)(3)(iii), in the 17th line, "in" should read "is".

BILLING CODE 1505-01-D

PENSION BENEFIT GUARANTY CORPORATION

Request for OMB Extension of Approval of Collection of Information in Single-Employer Plan Terminations

Correction

In notice document 92-30059 beginning on page 59129 in the issue of Monday, December 14, 1992, on page 59139, page 8 of Standard Form 500 was omitted. It should be inserted as follows:

FORM 500

(2) the participant elects the alternative form in writing, with the written consent of his or her spouse. Note: *For an election to be valid under (2), the participant must be given the opportunity to elect an immediate annuity (see 26 CFR §1.417 (e)-1).*

If the conditions described above are not satisfied, benefit liabilities must be distributed by the purchase from an insurer of an annuity contract that is an irrevocable commitment. Unless the participant is already in pay status, or has both elected to retire and elected a particular benefit form, the irrevocable commitment must preserve all benefit options under the plan.

Note: *Spousal consent is required for married participants for all options (other than a qualified joint-and-survivor annuity) if the present value of the participant's plan benefit is more than $3,500.*

The contract that is purchased must be a single premium, non-participating (except as discussed below), non-surrenderable annuity contract that constitutes an irrevocable commitment by the insurer to provide the benefits purchased.

A participating annuity contract may be purchased to provide the benefits if: (1) all benefit liabilities will be guaranteed under the annuity contract as the unconditional, irrevocable, and non-cancellable obligation of the insurer; (2) in no event, including unfavorable investment or actuarial experience, can the amounts payable to participants under the annuity contract decrease except to correct mistakes; and (3) no amount of residual assets to which participants are entitled will be used to pay for the participation feature. Specifically, if all or a portion of the residual assets will be distributed to participants, the additional premium for the participation feature must be paid from the contributing sponsor's share, if any, of the residual assets or from assets of the contributing sponsor. If the

FORM 500

plan provided for mandatory employee contributions, the amount of residual assets must be determined using the price of the annuities for all benefit liabilities without the participation feature.

If these requirements are not satisfied, a nonparticipating annuity contract must be purchased to close out the plan.

16b If (1) you do not yet know the insurer or insurers from whom (or from among whom) you intend to purchase irrevocable commitments; or (2) if you identify an insurer or insurers, either in the standard termination notice or in a supplemental notice to the PBGC, and subsequently decide to select a different insurer, you must file a supplemental notice with the PBGC no later than 45 days before the date of distribution (*i.e.*, the date on which the obligation to provide the benefit passes from the plan to the insurer). Any supplemental notice must include: the name and address of the insurer or insurers from whom, or (if not then known) from among whom, you intend to purchase the irrevocable commitments, and identify the contributing sponsor and plan by name, address, employer identification and plan numbers, and PBGC case number (if applicable). The supplemental notice should include a statement indicating whether the insurer(s) is licensed in a state or the District of Columbia.

Part IV. Residual Asset Plans

17 Section 4044(d) of ERISA permits a distribution of residual assets to the employer if (1) all liabilities of the plan to participants and their beneficiaries have been satisfied, (2) the distribution does not contravene any provision of law, and (3) the plan provides for such a distribution in these circumstances. In addition, in a plan that provided for mandatory employee contributions, the portion of the residual

BILLING CODE 1505-01-D

federal register

Thursday
December 17, 1992

Part II

Department of Education

34 CFR Part 668
Student Assistance General Provisions;
Final Regulations

DEPARTMENT OF EDUCATION

34 CFR Part 668

RIN 1840–AB47

Student Assistance General Provisions

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends subparts G and H of the Student Assistance General Provisions regulations. These subparts contain the procedures for administrative hearings regarding fines and the limitation, suspension, or termination of institutional participation in the student financial assistance programs under the Higher Education Act of 1965, as amended, and appeals by institutions of audit and program review determinations under these programs. These amendments permit interlocutory appeals of interim rulings in administrative proceedings and make minor changes to expedite conduct of these proceedings.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if Congress takes certain adjournments, with the exception of §§ 668.90, 668.98, and 668.124. Sections 668.90, 668.98, and 668.124 will become effective after the information collection requirements contained in those sections have been submitted by the Department of Education and approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980. If you want to know the effective date of these provisions of the regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Fred J. Marinucci, Office of the General Counsel, U.S. Department of Education, 400 Maryland Avenue, SW., room 4083, Washington, DC 20202–2244. Telephone (202) 401–2732. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION: The Student Assistance General Provisions regulations implement requirements that are common to the participation of postsecondary institutions in the student financial assistance programs under title IV of the Higher Education Act of 1965, as amended (title IV, HEA programs). The title IV, HEA programs include the Federal Pell Grant Program; the Federal Family Education Loan Program, including the Federal Stafford Loan, Federal PLUS, Federal Supplemental Loans for Students, and Federal Consolidation Loan Programs; State Student Incentive Grant, Federal Perkins Loan, Federal Work-Study, and Federal Supplemental Educational Opportunity Grant programs. The last three programs are known collectively as the "campus-based programs." Procedures for actions to fine institutions, or limit, suspend or terminate the eligibility of institutions under these programs, are found in subpart G. Procedures for appeals of final audit or program review determination under these programs are contained in subpart H. The Secretary here adopts, for these proceedings, a provision for interlocutory appeals similar to that proposed on January 6, 1992 (57 FR 506), for proceedings under 34 CFR part 81, and makes other minor procedural changes.

Summary of Changes

Section 668.85(c)

The regulations for fines in § 668.84 and the regulations for terminations in § 668.86 contain a reference to expedited hearings. However, the regulations for suspensions in § 668.85 do not contain a similar provision. This omission was an oversight and therefore the Secretary includes a similar provision for suspension proceedings.

Section 668.88

This section is revised to use the more common term "stipulation" to refer to the statement by the parties of the legal issues and factual allegations presented in the case which neither party disputes.

Section 668.90

The Secretary amends this section chiefly to provide additional time within which the hearing official is to issue the initial decision in a proceeding under or subject to subpart G, and to adopt the same timetable for an appeal of that initial decision as now applies to appeals under subpart H in § 668.119.

Experience has shown that current regulations that require the hearing official to issue a decision within 30 days of the close of the proceedings are not realistic, and that more time is needed. Under the first change, the hearing official is to issue the initial decision within 50 days of the last day of any evidentiary hearing in a case in which no posthearing briefs were scheduled, or, as under the current regulations, within 30 days after the last submission or the close of the proceedings. These final regulations also provide that the Secretary may extend this 30-day period to 60 days upon a showing by the hearing official that added time was needed because of the unusual complexity of the case.

Current regulations require a party who appeals the decision to the Secretary to do so within 20 days after receiving the initial decision by submitting a brief to the Secretary stating the reasons why the initial decision should be modified or reversed. The opposing party then has 15 days to respond. The appellate process benefits from adequately prepared and articulated presentations by the parties. Experience has shown that these two deadlines in current regulations are unrealistically short, both because the regulations require the appellant to file a brief by that deadline, rather than a simple notice of appeal, and because the appellee deserves a comparable period to address properly the issues raised by the appellant. Comparable Federal rules, for example, allow the appellant 40 days to file a brief, from the filing of the record with the appellate court, and allow the appellee 30 days to reply. Fed. R. App. P. 31(a). These final regulations allow an appellant 30 days within which to file, and the opposing party 30 days to respond.

This section is also amended to make it clear that, as in judicial proceedings, an appellate tribunal that affirms the ruling of a lower court need provide no statement of its reasons for doing so. The regulations will therefore clarify that no statement of reasons is required of the Secretary in the event the Secretary affirms a hearing official's decision. Similarly, to provide guidance to the lower courts, appellate courts typically provide a statement of reasons in a decision that reverses or modifies the ruling of a lower court, and the regulations will continue to provide for such a statement from the Secretary where he reverses or modifies the decision of a hearing official. This section is further amended to reflect the authority of the Secretary to remand an initial decision to the hearing official for further proceedings consistent with the Secretary's decision.

Section 668.119

The need for additional time within which to prepare and file briefs by appellant and appelee was explained above, and the appellate filing deadlines for audit and program review appeals are modified for the same reasons. The Secretary here expands from 15 to 30 days the time within which a party may appeal to the Secretary a decision of a

hearing official in an audit or program review determination or appeal. The opposing party should have an equal opportunity to reply to the appellant's brief, and the opposing party is given a corresponding enlargement of time from 15 to 30 days within which to reply.

Sections 668.90, 668.120

These sections are revised to clarify that the Secretary may delegate to another Department official the authority to issue a decision in an appeal from a decision of a hearing official in a proceeding under subpart G or subpart H. The language of § 668.120 is revised to make clear that the Secretary's authority with regard to review of the decision of a hearing official is the same under subpart H as under subpart G. The latter revision is merely a technical clarification and reflects consistent practice under the current regulations.

Sections 668.98, 668.124

Two identical new sections are created to govern the process for interlocutory appeal to the Secretary of an interim ruling by a hearing official. This procedure is virtually identical to that proposed in the NPRM published on January 6, 1992 (57 FR 506) for interlocutory appeals in proceedings under part 81. Interlocutory appeal is a traditional procedural device allowing litigants an opportunity to secure prompt review by an appellate tribunal of those trial court rulings of immediate consequence to a party that would normally be reviewable only after final judgment by the trial court. The procedure benefits the litigants and the trial judge by clarifying the proper legal standard to be applied in the case on the issue in question, and permits the appellate tribunal to supervise the conduct of lower courts more effectively. These regulations will provide these same benefits for the affected institutions, the Department, the hearing official, and the Secretary.

These final regulations permit a party to seek an interlocutory appeal of the ruling if the ruling involves a controlling question of substantive or procedural law, and if resolution of that question would materially advance disposition of the appeal. The regulations also permit a hearing official to certify a ruling to the Secretary for immediate review. The discretion to review an interim ruling resides exclusively with the Secretary (or, as provided in these final regulations, an official to whom the Secretary delegates appellate decisionmaking authority), and the Secretary regards an interlocutory appeal as an extraordinary measure for which requests will not routinely be granted. If the Secretary does not act on a request from a party or the hearing official within 15 days of receipt, the request will be deemed to have been denied by that inaction. These regulations also make clear that any action requesting or granting interlocutory review does not automatically stay the proceedings. The decision to stay the proceedings remains at the discretion of the hearing official and the Secretary. These petitions are to be filed with the Department's Office of Hearings and Appeals.

These regulations require the proponent of an interlocutory appeal to provide a succinct explanation of the need for interim review, and provide the hearing official an opportunity to state his or her views on the desirability of the appeal. The regulations do not specify the particular procedures that will be used if the Secretary agrees to accept the request for review, beyond recognizing that the parties will be given an opportunity to address the merits of the petition in written submissions filed within a reasonable period established by the Secretary. This briefing procedure, and any other procedures to be used in disposing of the petition, will be established on a case-by-case basis by the Secretary as may be appropriate for resolution of particular issues.

Waiver of Rulemaking

In accordance with section 431(b)(2)(A) of the General Education Provisions Act, 20 U.S.C. 1232(b)(2)(A), and the Administrative Procedure Act, 5 U.S.C. 553, it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, as set forth below, the Secretary has determined that these regulations are rules of agency procedure. Accordingly, the Secretary is waiving rulemaking procedures with respect to these regulations under 5 U.S.C. 553(b)(A).

These regulations expand the procedural rights of institutions that appeal adverse administrative actions by permitting them to secure a prompt secretarial review of otherwise unappealable rulings by a Department hearing official and by allowing additional time for perfecting an appeal to the Secretary of a final decision of a hearing official in a proceeding to limit, suspend, or terminate the eligibility of the institution, or to fine it. These changes reflect a similar interlocutory appeal proposal proposed for Part 81 proceedings. These changes will provide immediate benefit to the participants in these proceedings. The simplicity of the changes reduces or eliminates the need for public comment on possible alternative regulatory options, and the attendant delay in making these benefits available to parties to these proceedings. The Secretary therefore concludes that public comment is not required for these procedural changes.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in that order.

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities. The small entities affected by these regulations are small institutions of postsecondary education. These regulations make only technical and procedural modifications to existing regulations. These changes will not increase institutions' workload or costs associated with administering the title IV, HEA programs and therefore will not have a significant economic impact on a substantial number of small entities.

Assessment of Educational Impact

The Secretary requests comments on whether the regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 668

Administrative practice and procedure, Colleges and universities, Consumer protection, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Student aid.

(Catalog of Federal Domestic Assistance Numbers: Supplemental Educational Opportunity Grant Program, 84.007; Guaranteed Student Loan Program, 84.032; PLUS Program, 84.032; Supplemental Loans for Students Program, 84.032; College Work-Study Program, 84.033; Perkins Loan Program, 84.038; Income Contingent Loan Program, 84.038; Pell Grant Program, 84.063; State Student Incentive Grant Program, 84.069; Robert C. Byrd Honors Scholarship Program, 84.185)

Dated: December 10, 1992.

Lamar Alexander,

Secretary of Education.

The Secretary amends part 668 of title 34 of the Code of Federal Regulations as follows:

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

1. The authority citation for part 668 continues to read as follows:

Authority: 20 U.S.C. 1085, 1088, 1091, 1092, 1094, and 1141, unless otherwise noted.

2. Section 668.85 is amended by adding a new paragraph (c) to read as follows:

§ 668.85 Suspension proceedings

* * * * *

(c) *Expedited hearings.* With the approval of the hearing officer and the consent of the designated department official and the institution, any time period specified in this section may be shortened.

(Authority: 20 U.S.C. 1094)

3. Section 668.88 is amended by revising paragraph (b)(3) and (b)(4) to read as follows:

§ 668.88 Hearing.

* * * * *

(b) * * *

(3) A stipulation by the parties to facts and legal authorities not in dispute; or

(4) A review limited to the written record.

* * * * *

4. Section 668.90 is amended by revising paragraphs (a)(1) and (c)(2) adding paragraph (c)(3), removing paragraphs (d)(1), (d)(3) and (d)(5), redesignating paragraphs (d)(2) and (d)(4) as paragraphs (d)(1) and (d)(2), respectively, and revising paragraphs (f)(1) and (f)(3) to read as follows:

§ 668.90 Initial and final decisions—Appeals.

(a)(1) The hearing official shall issue a written initial decision to the institution and the designated department officer by certified mail, return receipt requested, by the latest of the following dates:

(i) The 30th day after the last submission is filed.

(ii) The 60th day after the last submission is filed if the Secretary, upon request of the hearing official, determines that the unusual complexity of the case requires additional time for preparation of the decision.

(iii) The 50th day after the last day of the hearing, if the hearing official does not request the parties to make any posthearing submission.

* * * * *

(c) * * *

(2)(i) A party appeals to the Secretary by submitting to the Secretary, within 30 days after the party receives the initial decision, a brief or other written statement that explains why the party believes that the Secretary should reverse or modify the decision of the hearing official.

(ii) At the time the party files its appeal submission, the party shall provide a copy of that submission to the opposing party.

(3) The opposing party shall submit its brief or other responsive statement to the Secretary, with a copy to the appellant, within 30 days after it receives the appellant's brief or written statement.

* * * * *

(f)(1) The Secretary renders a final decision. The Secretary may delegate to a designated department official the functions described in paragraph (f) of this section.

* * * * *

(3) If the hearing official finds that the termination is warranted pursuant to § 668.90(a)(3)(i), the Secretary affirms that decision. In any other case, the Secretary may affirm, modify, or reverse the initial decision, or may remand the case to the hearing official for further proceedings consistent with the Secretary's decision. If the Secretary affirms the initial decision without issuing a statement of reasons, the Secretary adopts the opinion of the hearing official as the decision of the Secretary. If the Secretary modifies, remands, or reverses the initial decision, in whole or in part, the Secretary's decision states the reasons for the action taken.

* * * * *

5. A new § 668.98 is added to Subpart G to read as follows:

§ 668.98 Interlocutory appeals to the Secretary from rulings of a hearing official.

(a) A ruling by a hearing official may not be appealed to the Secretary until the issuance of an initial decision, except that the Secretary may, at any time prior to the issuance of the initial decision, grant a review of a ruling upon either a certification by a hearing official of the ruling to the Secretary for review or the filing of a petition for review of a ruling by one or both of the parties, if—

(1) That ruling involves a controlling question of substantive or procedural law; and

(2) The immediate resolution of the question will materially advance the final disposition of the proceeding or subsequent review will be an inadequate remedy.

(b)(1) A petition for interlocutory review of an interim ruling must include the following:

(i) A brief statement of the facts necessary to an understanding of the issue on which review is sought.

(ii) A statement of the issue.

(iii) A statement of the reasons showing that the ruling complained of involves a controlling question of substantive or procedural law and why immediate review of the ruling will materially advance the disposition of the case, or why subsequent review will be an inadequate remedy.

(2) A petition may not exceed ten pages, double-spaced, and must be filed with a copy of the ruling and any findings and opinions relating to the ruling.

(c) A copy of the petition must be provided to the hearing official at the time of filing with the secretary, and a copy of a petition or any certification must be served upon the parties by certified mail, return receipt requested. The petition or certification must reflect this service.

(d) If a party files a petition under this section, the hearing official may state to the Secretary a view as to whether review is appropriate or inappropriate by submitting a brief statement addressing the party's petition within 10 days of the receipt of that petition by the hearing official. A copy of the statement must be served on all parties by certified mail, return receipt requested.

(e) A party's response to a petition or certification for interlocutory review must be filed within seven days after service of the petition or statement, as applicable, and may not exceed ten pages, double-spaced, in length. A copy of the response must be served on the parties and the hearing official by hand delivery or regular mail.

(f) The filing of a petition for interlocutory review does not automatically stay the proceedings. A stay during consideration of a petition for review may be granted by the hearing official if that official has certified or stated to the Secretary that review of the ruling is appropriate. The Secretary may order a stay of proceedings at any time after the filing of a request for interlocutory review.

(g) The Secretary notifies the parties if a petition or certification for interlocutory review is accepted, and may provide the parties a reasonable time within which to submit written argument with regard to the merit of the petition or certification.

(h) If the Secretary takes no action on a petition or certification for review within 15 days of receipt of it, the request is deemed to be denied.

(i) The Secretary may affirm, modify, set aside, or remand the interim ruling of the hearing official.

(j) The Secretary may delegate to a designated department official the functions described in paragraphs (f) through (i) of this section.

(Authority: 20 U.S.C. 1094)

§ 668.119 [Amended]

6. In § 668.119, paragraphs (a) and (d) are amended by removing "15 days" and adding, in its place, "30 days".

7. Section 668.120 is amended by revising paragraph (a) to read as follows:

§ 668.120 Decision of the Secretary.

(a)(1) The Secretary issues a final decision. The Secretary may affirm, modify, or reverse the decision of the hearing official, or may remand the case to the hearing official for further proceedings consistent with the Secretary's decision.

(2) The Secretary may delegate the performance of functions under this section to a designated department official.

* * * * *

8. A new § 668.124 is added to subpart H to read as follows:

§ 668.124 Interlocutory appeals to the Secretary from rulings of a hearing official.

(a) A ruling by a hearing official may not be appealed to the Secretary until the issuance of an initial decision, except that the Secretary may, at any time prior to the issuance of the initial decision, grant a review of a ruling upon either a certification by a hearing official of the ruling to the Secretary for review or the filing of a petition for review of a ruling by one or both of the parties, if—

(1) That ruling involves a controlling question of substantive or procedural law; and

(2) The immediate resolution of the question will materially advance the final disposition of the proceeding or subsequent review will be an inadequate remedy.

(b)(1) A petition for interlocutory review of an interim ruling must include the following:

(i) A brief statement of the facts necessary to an understanding of the issue on which review is sought.

(ii) A statement of the issue.

(iii) A statement of the reasons showing that the ruling complained of involves a controlling question of substantive or procedural law and why immediate review of the ruling will materially advance the disposition of the case, or why subsequent review will be an inadequate remedy.

(2) A petition may not exceed ten pages, double-spaced, and must be filed with a copy of the ruling and any findings and opinions relating to the ruling.

(c) A copy of the petition must be provided to the hearing official at the time of filing with the Secretary, and a copy of a petition or any certification must be served upon the parties by certified mail, return receipt requested. The petition or certification must reflect this service.

(d) If a party files a petition under this section, the hearing official may state to the Secretary a view as to whether review is appropriate or inappropriate by submitting a brief statement addressing the party's petition within 10 days of the receipt of that petition by the hearing official. A copy of the statement must be served on all parties by certified mail, return receipt requested.

(e) A party's response to a petition or certification for interlocutory review must be filed within seven days after service of the petition or statement, as applicable, and may not exceed ten pages, double-spaced, in length. A copy of the response must be served on the parties and the hearing official by hand delivery or regular mail.

(f) The filing of a petition for interlocutory review does not automatically stay the proceedings. A stay during consideration of a petition for review may be granted by the hearing official if that official has certified or stated to the Secretary that review of the ruling is appropriate. The Secretary may order a stay of proceedings at any time after the filing of a request for interlocutory review.

(g) The Secretary notifies the parties if a petition or certification for interlocutory review is accepted, and may provide the parties a reasonable time within which to submit written argument with regard to the merit of the petition or certification.

(h) If the Secretary takes no action on a petition or certification for review within 15 days of receipt of it, the request is deemed to be denied.

(i) The Secretary may affirm, modify, set aside, or remand the interim ruling of the hearing official.

(j) The Secretary may delegate to a designated department official the functions described in paragraphs (f) through (i) of this section.

(Authority: 20 U.S.C. 1094)

[FR Doc. 92–30388 Filed 12–16–92; 8:45 am]

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Thursday
December 17, 1992

Part III

Environmental Protection Agency

40 CFR Part 88
Credit Program for California Pilot Test Program; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 88

[FRL–4541–4]

RIN 2060–AD30

Credit Program for California Pilot Test Program

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: Provisions of the Clean Air Act enacted in 1990 require EPA to promulgate a clean-fuel vehicle program in the State of California. The program calls for the establishment of clean-fuel vehicle sales requirements, fuel availability requirements, state opt-in provisions, and, at the discretion of the Administrator, a credit program. This final rule addresses only the credit program portion of the California Pilot Test Program. The credit program is designed to assist vehicle manufacturers in meeting their clean-fuel vehicle sales requirement. Participation of the vehicle manufacturers in the credit program is optional. This credit program was proposed by EPA on September 25, 1991.

EFFECTIVE DATE: This final rule is effective December 17, 1992.

ADDRESSES: Materials relevant to this final rule are contained in EPA Air Docket LE–131, Attention: Docket No. A–91–23, located at the Air Docket Section, U.S. Environmental Protection Agency, room M–1500, 401 M Street SW., Washington, DC 20460 telephone (202) 382–7548. The docket may be inspected between the hours of 8:30 a.m. to 12 noon and from 1:30 to 3:30 p.m. on weekdays. A reasonable fee may be charged by EPA for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Mr. Peter Caffrey, U.S. EPA (SDSB–12), Regulation Development and Support Division, 2565 Plymouth Road, Ann Arbor, MI 48105, Telephone: (313) 741–7829.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. California Pilot Test Program

Section 249 of the Clean Air Act (CAA), added to the Act by the 1990 Clean Air Act Amendments (Pub. L. 100–549), requires EPA to establish a clean-fuel vehicle pilot program in the State of California (the California Pilot Program, hereinafter referred to as the Pilot Program). As stated in section 249(a), the purpose of the Pilot Program is "to demonstrate the effectiveness of clean-fuel vehicles in controlling air pollution in ozone nonattainment areas." The Pilot Program will include requirements concerning the number of clean-fuel vehicles to be produced and sold, fuel availability requirements, vehicle certification and enforcement procedures, and a credit program for clean-fuel vehicle sales. Additional information on the Pilot Program is available in the NPRM for this credit program (56 FR 48614, September 25, 1991).

This final rule concerns only the credit program authorized by CAA section 249(d). Regulations concerning other aspects of the Pilot Program, including sales requirements, clean-fuel vehicle exhaust emission standards for non-methane organic gas (NMOG), carbon monoxide (CO), nitrogen oxides (NO_x), particulate matter (PM), and formaldehyde (HCHO), and other requirements applicable to clean-fuel vehicles, are not required to be promulgated until two years after the enactment of the Clean Air Act Amendments of 1990, i.e., November 15, 1992 (see sections 242(a), 249(c), 249(f) of the CAA). Consequently, these aspects of the Pilot Program will be addressed in a separate rulemaking.

B. CARB's Low-Emission Vehicle and Clean-Fuels Program

As discussed in the NPRM, the California Air Resources Board (CARB) has established a Low-Emission Vehicle program that establishes a fleet-average, non-methane organic gas (NMOG) exhaust emission standard that manufacturers must meet with their new model year sales, as well as certain percent of sales requirements for some vehicle types and weight classes. These requirements will result in the sale of a large number of clean-fuel vehicles annually. CARB's program also establishes four levels of clean-fuel vehicle emission standards, clean fuel availability requirements and a credit program. Further information is available in the NPRM for this credits program (56 FR 48614) and in the following documents available in the docket: "Proposed Regulations for Low-Emission Vehicles and Clean Fuels: Staff Report", "Proposed Regulations for Low-Emission Vehicles and Clean Fuels: Technical report", and "Regulations for Clean Fuels", all published by CARB.

C. Content of the Federal Rule

The language of the CAA indicates that the Pilot Program has been modeled in large part after the provisions of CARB's Low-Emission Vehicle program. The clean-fuel vehicle standards, fuel availability language, and credit program are all examples of this. As a result of the many similarities between the Pilot Program and CARB's Low-Emission Vehicle Program, and the likelihood that CARB's program will result in more clean-fuel vehicles being sold than are required under the Pilot Program, the Pilot Program is unlikely to have a significant environmental impact in California. Thus, EPA is fulfilling its obligations for the Pilot Program in a manner that will minimize any additional economic burden on vehicle manufacturers or adverse impacts on other entities, while at the same time ensuring that the program's environmental objectives are met. EPA believes this approach is consistent with the intent of the CAA's Pilot Program.

To accomplish this goal a Federal credit program is essential. A failure by EPA to promulgate a credit program could eliminate the sales flexibility afforded by CARB's credit program (as described in the NPRM). This could result in a manufacturer satisfying CARB's sales requirements through the use of credits but failing to meet the Pilot Program requirements because of the absence of a credit program that would allow the averaging, banking, and trading of credits. This could lead to extra costs to the manufacturer, which could be forced to meet the Pilot Program sales requirements through additional production and sales of clean-fuel vehicles.

EPA believes it is important to provide manufacturers with flexibility in meeting their clean-fuel vehicle sales requirements under the Pilot Program in order to allow them to optimize their development of clean-fuel vehicles required by both CARB's program and the Pilot Program and to avoid extra costs that may provide no additional environmental benefit.

The following sections of this preamble will discuss only the provisions of the Pilot Program that relate to the promulgation of the credit program. Areas where the credit program for the Pilot Program differ from that of CARB's are then examined and comments received concerning the NPRM are addressed. Following a description of the final rule, its environmental, economic, and energy impacts are discussed. The remaining sections cover EPA's statutory authority for the rule, administrative designation of the rule, compliance with the Regulatory Flexibility Act, and reporting and recordkeeping requirements.

II. Description of the Federal Credit Program

A. Statutory Requirements

Section 249(d) of the CAA gives EPA the discretion to issue credits to vehicle manufacturers for the sale of more clean-fuel vehicles than required and for the sale of clean-fuel vehicles that meet more stringent emission standards than those otherwise applicable to clean-fuel vehicles. Once EPA chooses to implement a Federal credit program, section 249(d) of the CAA places a number of constraints on the design of that program. The more stringent standards for the issuance of such credits and the requirements relating to the weighting of such credits on the basis of emission reductions must be those which are established by EPA under the provisions of the clean-fuel fleets program (see CAA section 246). Credits issued by EPA to manufacturers may be transferred to other manufacturers, i.e., they may be traded. Furthermore, any credits issued are to be granted notwithstanding any State law requirements or credits granted with respect to the same vehicles under State law. Despite these statutory requirements, section 249(d)(1)(B) provides EPA with some discretion regarding the credit program for the Pilot Program by stating that the "Administrator may make the credits available for use after consideration of enforceability, environmental, and economic factors and upon such terms and conditions as he finds appropriate."

B. Differences Between Federal Requirements and CARB's Credit Program

EPA's credit program is designed to be consistent with CARB's credit program wherever it is reasonable and legally justifiable in order to grant vehicle manufacturers the same flexibility in meeting the sales requirements of both programs. However, as discussed in the NPRM, statutory provisions of the CAA preclude EPA from promulgating a credit program for the Pilot Program that exactly matches that of CARB's. There are two principal differences between CARB's credit program and the Federal program, the method of weighting credits and the issue of negative banking, both of which are discussed below.

The Pilot Program's credit weightings, which must conform to the clean-fueled fleets credit weighting method (section 249(d)(3) of the CAA), are different from CARB's in two ways. First, the fleet average NMOG values used in CARB's program for vehicles under 6000 lbs gross vehicle weight rating (GVWR) are not used. Instead, following the credit-weighting system of the fleets program, credit values are based on individual vehicle NMOG emission rates. This method is similar to CARB's credit program for trucks over 6000 lbs GVWR. Second, in keeping with the flexibility allowed in the CAA, averaging and trading across all subclasses of light duty trucks (LDVs) and light duty vehicles (LDTs) is allowed (up to 8500 lbs GVWR). This provides vehicle manufacturers significantly greater flexibility in meeting the Pilot Program sales requirements than CARB's credit program which does not allow the transfer of credits between vehicles less than and greater than 6000 lbs GVWR. Because of this increased flexibility the use of credit weightings different from those used by CARB is not expected to have a negative impact on vehicle manufacturers.

The other major difference between the two credit programs is that CARB's program permits negative banking while the Pilot Program does not. If negative banking is allowed and used extensively in the early years of the Pilot Program, there is a possibility that the statutorily-prescribed clean-fuel vehicle sales requirement would not be met. This would effectively delay the implementation of the program, which the CAA does not give EPA the authority to do. Even if the statutory minimum number of vehicles were sold each year as a result of CARB's program, negative banking would not allow EPA to properly enforce the minimum sales requirement should the manufacturers fail to reach it. EPA, therefore, believes that manufacturers must meet the minimum sales requirements of paragraph 249(c)(1) of the CAA. However, as will be discussed in the rulemaking establishing the vehicle standards and sales requirements EPA intends to use its enforcement discretion so as to provide manufacturers some flexibility should they fall slightly below their minimum sales requirements.

Even without negative banking, one might argue that a banking program could create the possibility that the minimum sales requirement may not be met since credits earned from earlier years could potentially be used in high enough quantities in a later model-year to satisfy the sales requirement without actually selling the minimum number of vehicles. However, since the vehicles that earned credits in earlier years are already in service, the total number of clean-fuel vehicles in use is not reduced by the presence of a banking program and the environmental benefits are enhanced rather than diminished. Therefore, EPA believes that banking credits for future use could accelerate implementation of the program, not delay it. Thus, the Agency considers banking to be environmentally beneficial even though a negative banking program is not. For additional information and discussion of the differences between CARB's program and the statutory requirements for the Pilot Program the reader is referred to the NPRM for the credit program as well as CARB's publications that were cited previously and EPA's proposal concerning credits and exemptions from transportation control measures for clean-fueled fleets (56 FR 50196), which are contained in the docket.

C. Credit Program for the Pilot Program

EPA's credit program provides vehicle manufacturers flexibility in meeting the Pilot Program sales requirements similar to the flexibility they have in CARB's program. Vehicle manufacturer participation in the Pilot Program's credit program would be voluntary. As long as a manufacturer fulfills its sales requirement through its own clean-fuel vehicle sales, there would be no need for the manufacturer to participate in the credit program, unless it chooses to accumulate credits for future use or for trading with other manufacturers.

The following sections discuss various issues associated with the credit program. Comments received on the NPRM are discussed and considered in the appropriate section.

1. Averaging

Pursuant to the provisions of the CAA, EPA is promulgating averaging provisions as part of the credit program, which allow a manufacturer to earn credits from the sale of clean-fuel vehicles that meet NMOG exhaust emission standards that are more stringent than required. These credits may be applied toward the manufacturer's sales requirement in order to reduce the total number of clean-fuel vehicles it must sell. This should encourage the introduction of clean-fuel vehicles that meet more stringent standards.

The CAA does not specify any weight class restrictions on the use of credits for vehicles subject to the Pilot Program. In order to provide the maximum flexibility to vehicle manufacturers in complying with their sales requirements, EPA is promulgating only one averaging category covering all clean-fuel LDVs and LDTs. This is consistent with the CAA provisions for the clean-fueled fleets credit program, which provide in section 246(f)(2)(B)

only for a barrier to trading credits between vehicles of up to 8,500 lbs. gross vehicle weight rating (GVWR) and vehicles of more than 8,500 lbs. GVWR. Averaging across the vehicle classes subject to the Pilot Program achieves the same environmental benefit at potentially lower cost and allows manufacturers greater flexibility than under CARB's program.

2. Trading

As described above, the trading of credits between manufacturers is explicitly permitted by section 249(d)(1) of the CAA. Trading gives manufacturers increased flexibility in meeting their sales requirements. Trading also allows small volume manufacturers the ability to avoid the disproportionately high cost of clean-fuel vehicle development, while still contributing to the overall clean-fuel sales requirements. By purchasing credits through trading, small volume manufacturers could help defray the cost of developing the clean-fuel vehicle technology in proportion to their California sales volumes.

3. Banking

Although the CAA does not require banking in the Pilot Program, EPA is promulgating the banking program as proposed. EPA believes that banking will encourage both the early development of clean-fuel vehicles and the development of vehicles meeting more stringent emission standards than required. It will also facilitate the transition to tighter standards in the 2001 model year. In addition, banking provides manufacturers with the same flexibility that they have under CARB's program. Each model year, a manufacturer is given the option of either trading or banking credits earned that were not used in averaging to meet the current model year sales requirement.

Comments were received from CARB expressing its support for a banking provision, but suggesting that credits be discounted in order to promote the active use of credits. They stated that failure to discount banked credits could lead to a stagnant accumulation of credits thereby delaying the implementation of new technologies.

EPA, however, does not believe that the failure to discount Pilot Program credits will result in a delay in the implementation of new technologies. EPA believes that CARB's program will be the controlling force in initiating the development and implementation of new technologies with or without a Federal program. As a result, whether EPA discounts banked credits under the Pilot Program or not should have little impact on vehicle development and environmental impact of the program. Therefore, since discounting would add one more complexity to the credit program for no tangible benefit, credits in the Pilot Program will not be discounted over time. This is also consistent with the CAA provisions regarding credits for the fleet program, which provide in section 246(f)(2)(A) that credits are not to be discounted.

4. Negative Banking

In the NPRM (56 FR 48614) EPA expressed its concern that negative banking could result in clean fuel vehicle sales below the statutory minimum sales volume. Nevertheless, EPA acknowledged the merits of negative banking due to the additional flexibility it would provide manufacturers, and solicited comments on how negative banking could be allowed without compromising the minimum sales requirement.

The Motor Vehicle Manufacturers Association (MVMA) and Electric Transportation Coalition (ETC) both commented on the concept of negative banking. They stated that the flexibility of negative banking would provide a buffer for automobile manufacturers should they encounter production shortfalls due to unforeseen economic downturns. Both organizations supported the idea of limiting negative banking to a certain portion of the total allotted sales volume. MVMA suggested that, if negative banking were utilized in a particular year, then that deficit must be made up in the following year. Thus, a negative credit balance could not be carried over for more than one year.

EPA appreciates the concerns of manufacturers and the difficulty encountered in meeting a fixed sales quota regardless of the economic climate. EPA also believes that the limited volume, one year reconciliation concept put forth by MVMA has much merit. However, it is EPA's position that providing for negative banking explicitly as a part of the credit program would not be consistent with the sales requirements of the CAA, which require that minimum numbers of clean-fuel vehicles be sold each year.

5. Credit Standards

Section 243 of the CAA clearly defines the minimum clean-fuel vehicle NMOG, carbon monoxide (CO), nitrogen oxide (NOx), particulate (PM), and formaldehyde exhaust emission requirements that serve as the baseline from which credits are to be calculated. Section 246(f)(4) of the CAA requires EPA to promulgate more stringent exhaust emission standards, conforming as closely as possible to CARB's standards, solely for the purposes of issuing credits. The clean-fuel vehicle standards established in section 243 of the CAA and the more stringent vehicle standards to be used for credit purposes are shown in table 1.

The exhaust standards in table 1 are used for illustrative purposes only since EPA has not yet promulgated standards containing the clean-fuel vehicle exhaust standards. (Section 242 of the CAA does not require EPA to promulgate clean-fuel vehicle standards until November 15, 1992.) Should the subsequent Pilot Program rulemaking change these emission standards, the credit values contained in this rule will be adjusted accordingly in that rulemaking. To simplify the credit calculations, only the 50,000 mile standards are used (see table 1) rather than the 100,000 mile standards or some combination of the two.

The standards in table 1 are identical to the standards CARB established for their Low-Emission Vehicle Program. For vehicles up to 6,000 lbs GVWR, Pilot Program Phase I clean-fuel vehicles are equivalent to CARB's Transitional Low-Emitting Vehicle (TLEV) emission category and Phase II clean-fuel vehicles are equivalent to CARB's Low-Emitting Vehicle (LEV) emission category. When Phase II of the Pilot Program starts in the 2001 model year, vehicles certified to CARB's TLEV standards will no longer qualify as federal clean-fuel vehicles and will, therefore, not count toward meeting the Pilot Program sales requirements. For vehicles from 6,001 to 8,500 lbs GVWR, the CAA defines CARB's LEV emission category as a clean-fuel vehicle. The two additional emission categories for credit purposes only for this vehicle weight classification are defined to be CARB's Ultra Low-Emitting Vehicle (ULEV) and Zero Emitting Vehicle (ZEV) classifications (see CARB's: Proposed Regulations for Low-Emission Vehicle and Clean-Fuel, Staff Report; in the docket).

6. Credit Weighting

Section 246(f)(2)(C) of the CAA requires that credits be adjusted with appropriate weighting to reflect the level of emission reductions achieved by clean-fuel vehicles. Standards-based weighting factors depend not only on the more stringent standards EPA is required to promulgate, but also on the standards for conventional vehicles and for the minimum clean-fuel vehicle. The amount of credit assigned to a cleaner vehicle depends upon how much further these vehicles go beyond the

minimum clean-fuel vehicle in reducing emissions.

In the NPRM on the Pilot Program, EPA proposed to use the same credit weighting system and methodology as was required in the Clean-Fueled Fleets Program. The fleets program credit weighting system is based on NMOG exhaust emission reductions. The fleet credit program NPRM also proposed an optional credit weighting system that non-attainment areas could choose to apply in lieu of the otherwise required NMOG system, based on a combination of NMOG and NOx exhaust emission reductions. As proposed in the Pilot Program NPRM, EPA is only promulgating credit weightings based on NMOG emissions since this is more consistent with the CARB program. For further discussion of this issue the reader is referred to the NPRM.

As mentioned above, EPA is using the emission standards listed in table 1 for the purpose of credit calculations at this time. Should the rulemaking establishing the rest of the Pilot Program change these standards, new values will be included in that rulemaking.

As discussed in the NPRM, the credit values proposed for the fleets program do not take into account Phase I clean-fuel vehicles (i.e., TLEVs) because Phase I vehicles are not subject to the fleets program. Therefore, in addition to adopting the fleets credit values for 2001 and subsequent model-years, EPA is establishing credit values for the Phase I vehicles of the Pilot Program using the same methodology as used to determine the credit values in the fleets program. All credit values are normalized to the NMOG exhaust emission reduction required by LDVs to facilitate the exchange of credits across all subclasses of LDVs and LDTs. Therefore, the term "vehicle-equivalent" refers to the reduction calculated for a LDV certified to the minimum clean-fuel vehicle standard (TLEV through 2000, LEV 2001 and later). For early clean-fuel vehicle sales and extra clean-fuel vehicle sales, vehicle equivalent credits are calculated by dividing the difference between the 50,000 mile NMOG standards for a conventional vehicle and the clean-fuel vehicle in question (vehicles of the same vehicle type) by the difference between the conventional vehicle standard and minimum clean-fuel vehicle standard for a light duty vehicle (0.125 g/mi through 2000, 0.175 g/mi 2001 and after). For the sale of clean-fuel vehicles meeting more stringent clean-fuel vehicle standards, credits are calculated by dividing the difference between the 50,000 mile NMOG standard for the minimum clean fuel vehicle (TLEV through 2000, LEV 2001 and after) and the standard for the clean fuel vehicle in question (vehicles of the same vehicle type) by the difference between the conventional vehicle standard and minimum clean-fuel vehicle standard for a light-duty vehicle (0.125 g/mi through 2000, 0.175 g/mi 2001 and later). The credit values for Phase I are shown in table 2 and are valid through model year 2000. The credit values developed for the fleets program and established for 2001 and subsequent model-years are shown in table 3. For a more detailed explanation of the methodology used for determining the credit values, see the Fleets Program NPRM (56 FR 50196).

Since the LDTs over 6000 lbs GVWR will not be included in the minimum sales requirement until the standards for these trucks become effective in the 1998 model-year, the credit values in table 2.2 for these vehicles do not apply until the 1998 model-year. Manufacturers may still earn early credits for LDTs over 6000 lbs GVWR corresponding to the values in table 2.1.

The credits calculated by the above methodology and shown in tables 2 and 3, are based solely on emission standards and do not reflect any subclass differences in mileage or vehicle life. Any useful life difference among the clean-fuel vehicle classes that might affect the level of emission reduction was considered to be insignificant and was, therefore, not incorporated into the calculations. Since there is not a substantial difference between the full useful lives of LDVs (10 years/100,000 miles) and LDTs (11 years/120,000 miles), and since the trend in these vehicle classes is toward increasing similarity in usage patterns and technology, adjusting the credit is not justifiable given the increased complexity that these factors would present.

7. Credits for Electric Vehicles

The Electric Transportation Coalition (ETC) provided comments on the NPRM and stated that higher credits should be made available for electric vehicles through 1995 for LDVs and through 1997 for LDTs. They stated that this would spur the early development of electric vehicles which would in turn result in much greater air quality benefits. They supported their stance by pointing out that electric vehicles do not experience any emission deterioration with increasing time and mileage as do most other vehicles. Without any deterioration, electric vehicles provide an even greater emission reduction than they are given credit for based upon their certification standards. Consequently, ETC supports greater credits for ZEVs, suggesting that these credits could be doubled to reflect the greater emissions savings that can be realized by the use of electric vehicles. In addition, ETC suggested that greater (double) credits also be given to ULEVs.

While EPA recognizes the positive aspects of electric vehicles and the fact that their emissions do not deteriorate over time, at this time it is not possible to determine whether additional credit is justified. If the air quality benefits of the Pilot Program are to be realized, electric vehicles must be given appropriate credit for their in-use emission reductions relative to those from all other clean-fuel vehicles. Unfortunately, at the present time, adequate information is not available to predict the in-use emission performance of all other types of clean-fuel vehicles. Because of the new technology anticipated to be used to meet the clean-fuel vehicle standards, the emission deterioration rates for clean-fuel vehicles are likely to be significantly different from that of current conventional vehicles, and are likely to vary dramatically among clean-fuel vehicle types. Until further data and information on the in-use performance of the various new technologies that will be used to meet the CFV standards becomes available, EPA believes it is appropriate to base the credit calculations on the 50,000 mile certification standards.

The credit program established by CARB yields credit weightings similar to those under the Pilot Program for each vehicle emission class. Thus, maintaining the proposed credit weightings in the final program is consistent with the aim of the Pilot Program to be as similar as possible to CARB's Program in order to make compliance with the two programs for all parties involved as smooth as possible.

Furthermore, EPA does not believe that providing electric vehicles greater credit under the Pilot Program would significantly spur their development. Requirements for the sale of clean-fuel vehicles under the Pilot Program are expected to be dwarfed by the requirements of CARB's LEV program, causing Pilot Program credits to be of relatively little importance. In addition, CARB's special sales mandates for ZEV's in the LEV program are expected to do far more to spur the development of clean-fuel vehicles than any additional credit granted under the Pilot Program ever could. Thus, EPA will retain the proposed credit values and not grant additional credit for electric vehicles. Nevertheless, EPA is sensitive

to the matter of non-deteriorating emissions from electric vehicles and may propose adjustments to the credit values for ZEVs and other clean-fuel vehicles in the future when further data and information becomes available.

In response to EPA's request for comments on the possibility of providing credits for hybrid electric vehicles (HEVs), ETC and CARB responded with comments in favor of credits of HEVs. ETC suggested that HEVs receive the full credit value of a ZEV where it can be shown that the HEV can travel 50 or more miles, based on the Federal Urban Dynamometer Driving Schedule (UDDS), on a single charge of the battery using battery power alone and as long as the vehicle cannot be operated solely on non-electric power. In addition ETC suggested that ULEV credits be granted to HEVs that can be operated solely on their internal combustion engine regardless of their range on battery power alone.

CARB noted that its LEV program allows an HEV to be averaged into a manufacturer's fleet average NMOG requirement at a lower NMOG value than the emission category to which it was certified, provided it has a certain minimum battery operating range. CARB stated that this feature encourages the development of HEVs having greater battery ranges. CARB encouraged EPA to consider allowing similar additional credits for HEVs having a minimum battery range.

EPA believes that the emissions from HEVs when they are operated non-electrically are highly uncertain. Also, there is no guarantee that a vehicle owner will choose to run a vehicle electrically for any length of time. The total percentage of time that an individual vehicle owner will operate a vehicle solely on electricity is extremely variable and therefore it is difficult to make a determination of its emission level. This is further complicated by the wide variety of HEV concepts currently being considered by the industry. Much more information is required about the nature of HEVs before any decisions can be made regarding their respective emission categories. At the same time, EPA recognizes the potential air quality benefits of these vehicles and the need to provide them with the same opportunities as other vehicles. Therefore, EPA may reconsider these issues in the future.

8. Use of Credits

If in meeting its minimum clean-fuel vehicle sales requirement a manufacturer sells clean-fuel vehicles which meet the more stringent emissions standards, the manufacturer shall receive credit corresponding to the credit values in table 2.2 and 3.2. If the manufacturer sells more clean-fuel vehicles that are required or clean-fuel vehicles earlier than are required, the manufacturer shall receive credit corresponding to the credit values in table 2.1 and 3.1. In the case of selling more vehicles than required, the manufacturer shall have the discretion of choosing which clean-fuel vehicles are to be treated as credit generating vehicles. Since there are no weight class restrictions, it will be in the best interest for the vehicle manufacturer to select those vehicles for credit generation which receive the greatest amount of credit in tables 2.1 and 3.1.

In the case where a manufacturer does not sell the minimum number of clean-fuel vehicles required by the Pilot Program, it must purchase sufficient credits in lieu of the clean-fuel vehicles it did not sell. These credit values are listed in table 2.3 or 3.3. The manufacturer will have the discretion of choosing which of the conventional vehicles it sold were in lieu of selling the required clean-fuel vehicles. This is an important consideration because the manufacturer will then be required to purchase sufficient credits according to the credit values of the vehicle classes and/or subclasses it chose. Since EPA is requiring only one trading class for the credits, the manufacturer will be free to apply the obtained credit to any of its vehicle classes and/or subclasses.

The subsequent Pilot Program rulemaking, which will define the certification and enforcement provisions of the clean-fuel vehicle sales requirement, will also define the enforcement provisions for both sales reporting requirements and credit shortfalls necessary for this rulemaking. These enforcement provisions are common to both rulemakings and are better handled with all other enforcement provisions in the later rulemaking.

9. Early Credits

In the NPRM EPA proposed that early credits could be granted for clean-fuel vehicles sold prior to 1996. The granting of early credits would allow manufacturers to back credits, which could be used for averaging and trading in the initial years of the Pilot Program to assist in a smooth transition into the program. EPA proposed that clean-fuel vehicles sold in the 1994 model-year be the first vehicles eligible to receive early vehicle credits because 1994 would be the first full model-year after promulgation of all clean-fuel vehicle standards and certification requirements. Prior to 1994 there will not be a mechanism in place by which to certify vehicles and grant credits accordingly.

Comments were received from MVMA and ETC with both organizations suggesting that early credits be allowed before 1994. They stated that early credits will assist Small Volume Manufacturers (SVM) by making more credits available for trading earlier in the program. They also suggested that the introduction of credits prior to 1994 will provide "an incentive for manufacturers to introduce clean-fuel vehicles earlier, thus providing earlier environmental benefits and earlier consumer acceptance of clean-fuel vehicles."

EPA agrees with the commenters that granting credit for vehicles produced before the 1994 MY will encourage the early introduction of clean-fuel vehicles into the marketplace. Such a provision would also be more consistent with CARB's program. Furthermore, EPA believes that by allowing credits for 1992 through 1995 model year CFV sales, CARB's program will be virtually assured of providing that an adequate number of CFVs are sold in all years to fulfill the Pilot Program requirements. Thus, despite the fact that before-the-fact certification to EPA's standards will not be possible, EPA will allow retroactive credits, beginning with model year 1992. Credits will be granted retroactively, however, only if the vehicles receive a valid California certification and also fulfill the Federal requirements established in the Pilot Program standards rulemaking. The granting of retroactive credits will occur only if the Federal standards are replaced with CARB's standards in the clean-fuel vehicles standards rulemaking pursuant to section 243(e) of the CAA, which will mean that a vehicle certification to CARB's standards also meets the Federal certification standards. This determination will be made in the rulemaking for the Pilot Program to be published at a later date. If CARB's standards are found to be as protective then retroactive credits will be granted for qualifying vehicles back to model year 1992. Because this determination can not be made until the final rule for the standards portion of the Pilot Program is published, the calculation of any retroactive credits will not be made until 1996, the first year of required sales for the Pilot Program. This will allow manufacturers to use any accumulated credits in the first year of required Pilot Program sales. If CARB's standards are determined not to be as protective as the Federal standards then

retroactive credits will be granted from model year 1992 to 1996 as long as the vehicles were certified to the Federal standards.

10. Credit Trading to Stationary Sources

No language was contained in the NPRM regarding the possibility of trading mobile source credits derived from this program with stationary source credits. The Clean Fuel Fleets Credit Program NPRM, however, did solicit comments on the possibility of including stationary source trading. As a result, comments were received on the Pilot Program in this regard as well.

ETC recommended that EPA look into ways to allow mobile source emission credits generated under the Pilot Program to be traded with the emissions generated from stationary sources. They believe that having the broadest possible trading base will make the entire system much more flexible.

EPA is currently reviewing a variety of mobile source-stationary source trading issues and is planning to issue a guidance that will address mobile stationary source trading. Thus, EPA is not including any provisions in these regulations regarding trading to stationary sources.

11. Sales Requirements

In the NPRM, EPA stated that the sales requirements for the Pilot Program would be promulgated under a later rulemaking. EPA proposed a definition of the term "sales", at that time, in order to define the basis for granting credits. In the NPRM, EPA asked for comments on how the term sales could be defined in order to minimize the burden on the manufacturers while still adhering to the statutory requirements of the definition of "sales" stated in section 249(c)(1) of the CAA as vehicles that are "produced, sold, and distributed (in accordance with normal business practices and applicable franchise agreements) to ultimate purchasers in California."

In response to EPA's request MVMA commented that the term "sales" could be counted as sales "by a manufacturer to a dealer, distributer, fleet operator, broker, or any other entity which comprises the first point of sale." It noted that this definition would be consistent with that adopted in the rulemaking regarding the Tier I emission standards (56 FR 12724). MVMA also pointed out an additional aspect of the Tier I regulations that allows the substitution of a manufacturer's production data for the manufacturer's sales data. MVMA stated that the difference between the two numbers is small. It cited data for the 1987 to 1989 model years in which the mean difference between the sales and production data was approximately 0.2 percent. MVMA suggested that manufacturers be given the option of reporting sales data (as defined above) or actual production data with demonstration of the functional equivalence of it to sales.

EPA's goal is to establish as effective a program as possible without causing an undue burden on the manufacturer. Because of this and the apparent similarity between the three methods of evaluating clean-fuel vehicle sale, EPA has decided that the point of first sale is the most reasonable basis for determining compliance. EPA believes that sales to the ultimate purchaser and the first point of sales should be essentially equivalent, because all vehicles sold to any ultimate purchaser have to pass through or possibly terminate at the first point of sale. Any other definition of sales would require the manufacturers to initiate a new and much more cumbersome and expensive vehicle tracking program without any notable benefit to the environment.

In addition to this EPA recognizes that the difference between actual manufacturer sales and their production numbers has been shown to be an increasingly smaller number on a percentage basis over time (see Tier I rulemaking 56 FR 12724). EPA also expects that CARB's LEV program will result in far more CFVs in California than will be required under the Pilot Program (see CAA Section 249(c)(1)). Also, in their own CFV program CARB is establishing their definition of sales as the number of vehicles produced by a given manufacturer for sale in the state of California. In view of this information, EPA is proposing to allow similar flexibility with the Pilot Program as will be allowed in CARB's CFV program by giving manufacturers the option of submitting production numbers in lieu of actual sales numbers for each model year. EPA reserves the right to require that actual sales data be provided if it determines that a general equality (consistent with the language of the Tier I rulemaking) no longer exists between production data and sales data. EPA believes that this definition of sales makes sense for the Pilot Program because the sales of CFVs in California should surpass the requirements of the Pilot Program due to CARB's sales requirements. Consequently, this definition for vehicle sales will not necessarily be appropriate in all contexts.

12. Small Volume Manufacturer Concerns

Rover Group and CARB commented that small volume manufacturers may have difficulty complying with the emission and sales standards of the Pilot Program. They asked that EPA consider special provisions similar to those proposed by CARB whereby manufacturers with an average annual vehicles sales volume of less than 3000 units for the 1989–1991 model years would be exempt from the sales requirements until the year 2000. (See CARB's proposed rules in the docket).

The CAA is silent with respect to the treatment of small volume manufacturers. EPA believes that credit trading, which is addressed in this rulemaking, will help to alleviate the difficulties small volume manufacturers might otherwise have had in meeting a CFV sales requirement. The possibility of other provisions similar to CARB's, such as small volume manufacturer exemptions for a given period of time, will be addressed in the NPRM proposing the clean-fuel vehicle sales requirements for the Pilot Program.

III. Environmental Impact

EPA believes that the credit program will not result in a negative environmental impact and that all reasonable means have been taken to ensure the environmental neutrality of the credit program. Furthermore, the magnitude of CARB's Low-Emission Vehicle program, which requires clean-fuel vehicle sales that far exceed the sales requirements of the Pilot Program, should ensure that all environmental benefits expected to result from the Pilot Program are achieved.

IV. Economic Impact

The intent of the credit program is to provide flexibility to the vehicle manufacturers in meeting their clean-fuel vehicle sales requirements. This should minimize any potential for economic hardship resulting from the Pilot Program, while at the same time yielding no decrease in environmental benefits. Since CARB's Low-Emission Vehicle program will create greater environmental benefits and economic impacts than the Pilot Program, the proposed credit program should provide no additional economic burden beyond that of CARB's LEV program.

Given that there are two different, but similar credit programs, it is possible, however, that on a manufacturer specific basis some minor negative economic impacts could result. A manufacturer choosing to purchase Federal credits rather than produce all

of the clean-fuel vehicles it would otherwise have to produce may have to track and purchase both Federal credits and California credits. It is understood that just the act of managing its own credits could introduce some costs to a manufacturer; however, these are not likely to be significant. Moreover, since participation in the credit program is voluntary, a manufacturer would not choose to do it unless it viewed participation in the credit program as being more economically beneficial than producing CFVs.

The trading of Federal and California credits will likely take place together because a manufacturer who needs to purchase Federal credits will also be in need of California credits. The cost to purchase credits will be determined by the free-market, but is likely to be no higher than the cost of producing clean-fuel vehicles since a manufacturer would probably produce a clean-fuel vehicle rather than pay more than its production cost for credits. The cost of producing a clean-fuel vehicle is independent of the existence of a Federal credit program. As a result, whether the manufacturers must purchase only California credits or both Federal and California credits, the cost is expected to be the same.

In conclusion, EPA believes that negative economic impacts should not occur from the credit program. Therefore, the cost of clean-fuel vehicles to the consumer is expected to be no different than what will result from the implementation of CARB's program.

V. Energy Impact

The implementation of a credit program for the Pilot Program should have a minimal energy impact. Because manufacturers can earn more credit for vehicles which meet more stringent standards, fewer clean-fuel vehicles could theoretically be sold. The result would be a smaller fleet of clean-fuel vehicles than if no credit program was available. This reduction in fleet size would also reduce the volume of each particular clean-fuel.

The more stringent the vehicle standards, however, the more likely the vehicles are to be powered by a fuel other than gasoline. EPA is currently unaware of any reliable projections of the type of vehicles, the fuel used, or the energy efficiency of the clean-fuel vehicles that will be sold.

As discussed in the environmental and economic impact sections, due to the size of CARB's program, no fuel volume changes resulting from this credit program should occur. The Pilot Program should not affect the choice of clean-fuel vehicles and the choice of fuels used beyond what CARB's program will require. EPA, therefore, believes there will be no adverse energy impact associated with this rulemaking.

VI. Administrative Designation and Regulatory Analysis

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement that a Regulatory Impact Analysis be prepared. Major regulations have an annual effect on the economy in excess of $100 million; have a significant adverse impact on competition, investment, employment or innovation; or result in a major price increase. The elements of this rulemaking package do not constitute a major rule according to the established criteria. The implementation of this credit program will not increase the cost of clean-fuel vehicles, but will instead allow manufacturers another option which will help produce clean-fuel vehicles at lower costs. Therefore, it has been determined that this proposal does not constitute a "major" regulation.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB and any EPA response to those comments have been placed in the public docket for this rulemaking.

VII. Compliance With Regulatory Flexibility Act

Under section 605 of the Regulatory Flexibility Act, the Administrator is required to certify that a regulation will not have a significant adverse economic impact on a substantial number of small business entities. There will not be a significant impact on a substantial number of small business entities due to the credit program for the Pilot Program. The credit program will be beneficial for small volume manufacturers in meeting any sales requirement issued against them due to the option of purchasing credits in lieu of undertaking the financial investment to develop clean-fuel vehicles. For this reason, the requirements of this rule will not have a significant adverse economic impact on a substantial number of small entities. The benefits given to small volume manufacturers will not impose hardships or burdens on other small entities covered by this regulation.

VIII. Reporting and Recordkeeping Requirements

The information collection requirements in this final rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and have been assigned OMB control number 2060–0229. No additional requirements are added in this notice.

IX. Statutory Authority

Authority for the actions promulgated in this notice is granted to EPA by sections 241, 246, 249, and 301(a) in title II, part C of the Clean Air Act, as amended; 42 U.S.C. 7581, 7586, 7589, and 7601(a).

List of Subjects in 40 CFR Part 88

Administrative practice and procedures, Air pollution control, Gasoline, Motor vehicle pollution, Reporting and recordkeeping requirements.

Dated: November 18, 1992.

William K. Reilly,

Administrator.

Appendix to Preamble—Tables

TABLE 1.—EXHAUST EMISSION STANDARDS FOR CLEAN-FUEL VEHICLES 50,000 MILE STANDARDS

Vehicle emission category stds (g/mi)	LDV & LDT ≤6000 gvwr ≤3750 lvw	LDT ≤6000 gvwr >3750 lvw ≤5750 lvw	LDT[2] >6000 gvwr ≤3750 tw	LDT[2] >6000 gvwr >3750 tw ≤5750 tw	LDT[2] >6000 gvwr >5750 tw
CV:					
NMOG	0.25	0.32	0.25	0.32	0.39
CO	3.4	4.4	3.4	4.4	5.0
NO_x	0.4	0.7	0.4	0.7	1.1

TABLE 1.—EXHAUST EMISSION STANDARDS FOR CLEAN-FUEL VEHICLES 50,000 MILE STANDARDS—Continued

Vehicle emission category stds (g/mi)	LDV & LDT ≤6000 gvwr ≤3750 lvw	LDT ≤6000 gvwr >3750 lvw ≤5750 lvw	LDT[2] >6000 gvwr ≤3750 tw	LDT[2] >6000 gvwr >3750 tw ≤5750 tw	LDT[2] >6000 gvwr >5750 tw
HCHO	.....	.....	.....	.....	.....
TLEV:			(1)	(1)	(1)
NMOG	0.125	0.160	.....	.....	.....
CO	3.4	4.4	.....	.....	.....
NO_x	0.4	0.7	.....	.....	.....
HCHO	0.015	0.018	.....	.....	.....
LEV:					
NMOG	0.075	0.100	0.125	0.160	0.195
CO	3.4	4.4	3.4	4.4	5.0
NO_x	0.2	0.4	0.4	0.7	1.1
HCHO	0.015	0.018	0.015	0.018	0.022
ULEV:					
NMOG	0.040	0.050	0.075	0.100	0.117
CO	1.7	2.2	1.7	2.2	2.5
NO_x	0.2	0.4	0.2	0.4	0.6
HCHO	0.008	0.009	0.008	0.009	0.011
ZEV:					
NMOG	0.0	0.0	0.0	0.0	0.0
CO	0.0	0.0	0.0	0.0	0.0
NO_x	0.0	0.0	0.0	0.0	0.0
HCHO	0.0	0.0	0.0	0.0	0.0

[1] There is no TLEV category for this vehicle class.
[2] The clean-fuel vehicle standards are not effective until the 1998 model-year.
CV = Conventional gasoline vehicle.
TLEV = Transitional Low-Emitting Vehicle.
LEV = Low-Emitting Vehicle.
ULEV = Ultra Low-Emitting Vehicle.
ZEV = Zero Emitting Vehicle.
NMOG = Non-Methane Organic Gas.
CO = Carbon Monoxide.
NOx = Nitrogen Oxides.
HCHO = Formaldehyde.
gvwr = gross vehicle weight rating.
lvw = loaded vehicle weight.
tw = total weight.

TABLE 2.—CREDIT TABLE FOR PHASE I: VEHICLE EQUIVALENTS FOR LIGHT-DUTY VEHICLES AND LIGHT-DUTY TRUCKS

TABLE 2.1—CREDIT GENERATION: SELLING MORE CLEAN-FUEL VEHICLES THAN REQUIRED

[Phase I: Effective Through 2000 Model-Year]

Vehicle emission category	LDV & LDT ≤6000 gvwr ≤3750 lvw	LDT ≤6000 gvwr >3750 lvw ≤5750 lvw	LDT[2] >6000 gvwr ≤3750 tw	LDT[2] >6000 gvwr >3750 tw ≤5730 tw	LDT[2] >6000 gvwr >5750 tw
TLEV	1.00	1.28	(1)	(1)	(1)
LEV	1.40	1.76	1.00	1.28	1.56
ULEV	1.68	2.16	1.40	1.76	2.18
ZEV	2.00	2.56	2.00	2.56	3.12

Definitions—see Table 1.

TABLE 2.2—CREDIT GENERATION: SELLING MORE STRINGENT CLEAN-FUEL VEHICLES

Vehicle emission category	LDV & LDT ≤6000 gvwr ≤3750 lvw	LDT ≤6000 gvwr >3750 lvw ≤5750 lvw	LDT[2] <6000 gvwr ≤3750 tw	LDT[2] >6000 gvwr >3750 tw ≤5750 tw	LDT[2] >6000 gvwr >5750 tw
TLEV	0.00	0.00	(1)	(1)	(1)
LEV	0.40	0.48	0.00	0.00	0.00
ULEV	0.68	0.88	0.40	0.48	0.62
ZEV	1.00	1.28	1.00	1.28	1.56

Definitions—see Table 1.

TABLE 2.3—CREDIT NEEDED IN LIEU OF SELLING CLEAN-FUEL VEHICLE

Vehicle emission category	LDV & LDT ≤6000 gvwr ≤3750 lvw	LDT ≤6000 gvwr >3750 lvw ≤5750 lvw	LDT[2] >6000 gvwr ≤3750 tw	LDT[2] >6000 gvwr >3750 tw ≤5750 tw	LDT[2] >6000 gvwr >5750 tw
TLEV	1.00	1.28	(1)	(1)	(1)
LEV	.....	.....	1.00	1.28	1.56

[1] There is no TLEV category for this vehicle class.
[2] The clean-fuel vehicle standards are not effective until the 1996 model-year.
Definitions—see Table 1.

TABLE 3.—CREDIT TABLE FOR PHASE II: VEHICLE EQUIVALENTS FOR LIGHT-DUTY VEHICLES AND LIGHT-DUTY TRUCKS

TABLE 3.1.—CREDIT GENERATION: SELLING MORE CLEAN-FUEL VEHICLES THAN REQUIRED

[Phase II: Effective 2001 and Subsequent Model-Years]

Vehicle emission category	LDV & LDT ≤6000 gvwr ≤3750 lvw	LDT ≤6000 gvwr >3750 lvw ≤5750 lvw	LDT >6000 gvwr ≤3750 tw	LDT >6000 gvwr >3750 tw ≤5750 tw	LDT >6000 gvwr >5750 tw
LEV	1.00	1.26	0.71	0.91	1.11
ULEV	1.20	1.54	1.00	1.26	1.56
ZEV	1.43	1.83	1.43	1.83	2.23

Definitions—see Table 1.

TABLE 3.2.—CREDIT GENERATION: SELLING MORE STRINGENT CLEAN-FUEL VEHICLES

Vehicle emission category	LDV & LDT ≤6000 gvwr ≤3750 lvw	LDT ≤6000 gvwr >3750 lvw ≤5750 lvw	LDT >6000 gvwr ≤3750 tw	LDT >6000 gvwr >3750 tw ≤5750 tw	LDT >6000 gvwr >5750 tw
LEV	0.00	0.00	0.00	0.00	0.00
ULEV	0.20	0.28	0.29	0.34	0.45
ZEV	0.43	0.57	0.71	0.91	1.11

Definitions—see Table 1.

TABLE 3.3.—CREDIT NEEDED IN LIEU OF SELLING CLEAN-FUEL VEHICLE

Vehicle emission category	LDV & LDT ≤6000 gvwr ≤3750 lvw	LDT ≤6000 gvwr >3750 lvw ≤5750 lvw	LDT >6000 gvwr ≤3750 tw	LDT >6000 gvwr >3750 tw ≤5750 tw	LDT >6000 gvwr >5750 tw
LEV	1.00	1.26	0.71	0.91	1.11

Definitions—see Table 1.

For reasons set forth in the preamble, a new part 88 of title 40 of the Code of Federal Regulations is added to read as follows:

PART 88—CLEAN-FUEL VEHICLES

Subpart A—Emission Standards for Clean-Fuel Vehicles

Subpart B—California Pilot Test Program

Authority: Secs. 241, 246, 249, 301(a), Clean Air Act as Amended; 42 U.S.C. 7581, 7586, 7589, and 7601(a).

Subpart A—Emission Standards for Clean-Fuel Vehicles.

§ 88.101-94 Definitions.

The definitions in 40 CFR part 86 also apply to this subpart. The definitions in this section apply to all of part 88.

Heavy Light-Duty Truck means any light-duty truck rated greater than 6000 lbs. GVWR.

Light Light-Duty Truck means any light-duty truck rated through 6000 lbs GVWR.

Loaded Vehicle Weight is defined as the curb weight plus 300 lbs.

Low-Emission Vehicle means any light-duty vehicle or light-duty truck conforming to the applicable Low-Emission Vehicle standard, or any heavy-duty vehicle with an engine conforming to the applicable Low-Emission Vehicle standard.

Non-methane Organic Gas is defined as in section 241(3) Clean Air Act as amended (42 U.S.C. 7581(3)).

Test Weight is defined as the average of the curb weight and the GVWR.

Transitional Low-Emission Vehicle means any light-duty vehicle or light-duty truck conforming to the applicable Transitional Low-Emission Vehicle standard.

Ultra Low-Emission Vehicle means any light-duty vehicle or light-duty truck conforming to the applicable Ultra Low-Emission Vehicle standard, or any heavy-duty vehicle with an engine conforming to the applicable Ultra Low-Emission Vehicle standard.

Zero-Emission Vehicle means any light-duty vehicle or light-dutytruck conforming to the applicable Zero-Emission Vehicle standard, or any heavy-duty vehicle conforming to the applicable Zero-Emission Vehicle standard.

§ 88.102–94 Abbreviations.

The abbreviations of part 86 also apply to this subpart. The abbreviations in this section apply to all of part 88.

CO—Carbon Monoxide.
HCHO—Formaldehyde.
NMOG—Non-Methane Organic Gas.
NOx—Nitrogen Oxides.
PM—Particulate Matter.
GVWR—Gross Vehicle Weight Rating.
LVW—Loaded Vehicle Weight.
TW—Test Weight.
TLEV—Transitional Low-Emission Vehicle.
LEV—Low-Emission Vehicle.
ULEV—Ultra Low-Emission Vehicle.
ZEV—Zero-Emission Vehicle.

Subpart B—California Pilot Test Program

§ 88.201–94 Scope.

Applicability. The requirements of this subpart shall apply to the following:

(a) State Implementation Plan revisions for the State of California pursuant to compliance with section 249 of the Clean Air Act, as amended in 1990.

(b) Vehicle manufacturers with sales in the State of California.

§ 88.202–94 Definitions.

(a) The definitions in subpart A also apply to this subpart.

(b) The definitions in this subpart shall apply beginning with the 1992 model year.

Averaging for clean-fuel vehicles means the sale of clean-fuel vehicles that meet more stringent standards than required, which allows the manufacturer to sell fewer clean-fuel vehicles than would otherwise be required.

Banking means the retention of credits, by the manufacturer generating the emissions credits, for use in future model-year certification as permitted by regulation.

Sales means vehicles that are produced, sold, and distributed (in accordance with normal business practices and applicable franchise agreements) in the State of California, including owners of covered fleets under subpart C of part 86 of this chapter. The manufacturer can choose at their option from one of the following three methods for determining sales:

(i) Sales is defined as sales to the ultimate purchaser.

(ii) Sales is defined as vehicle sales by a manufacturer to a dealer, distributer, fleet operator, broker, or any other entity which comprises the first point of sale.

(iii) Sales is defined as equivalent to the production of vehicles for the state of California. This option can be revoked if it is determined that the production and actual sales numbers do not exhibit a functional equivalence per the.language of § 86.708–94(b)(1) of this chapter.

Trading means the exchange of credits between manufacturers.

§ 88.203–94 Abbreviations.

The abbreviations in subpart A of this part and in 40 CFR part 86 apply to this subpart.

§ 88.205–94 California Pilot Test Program Credits Program.

(a) *General.* (1) The Administrator shall administer this credit program to enable vehicle manufacturers who are required to participate in the California Pilot Test Program to meet the clean-fuel vehicle sales requirements through the use of credits. Participation in this credit program is voluntary.

(2) All credit-generating vehicles must meet the applicable emission standards and other requirements contained in subpart A of this part.

(b) *Credit generation.* (1) Credits may be generated by any of the following means:

(i) Sale of qualifying clean-fuel vehicles earlier than required. Manufacturers may earn these credits starting with the 1992 model year, contingent upon the requirements of paragraph (g) of this section.

(ii) Sale of a greater number of qualifying clean-fuel vehicles than required.

(iii) Sale of qualifying clean-fuel vehicles that meet more stringent emission standards than those required.

(2) For light-duty vehicles and light-duty trucks, credit values shall be determined in accordance with the following:

(i) For model-years through 2000, credit values shall be determined in accordance with table B–1 of this subpart.

(ii) For the 2001 and subsequent model-years, credit values shall be determined according to table B–2 of this subpart. The sale of light-duty vehicles classified as Transitional Low-Emission Vehicles shall not receive credits starting in model year 2001.

(iii) For the calculation of credits for the sale of more clean-fuel vehicles than required, the manufacturer shall designate which sold vehicles count toward compliance with the sales requirement. The remaining balance of vehicles will be considered as sold beyond the sales requirement for credit calculations.

(3) Vehicles greater than 8500 lbs gvwr may not generate credits.

(c) *Credit use.* (1) All credits generated in accordance with these provisions may be freely averaged, traded, or banked for later use. Credits may not be used to remedy any nonconformity determined by enforcement testing.

(2) There is one averaging and trading group containing all light-duty vehicles and light-duty trucks.

(3) A vehicle manufacturer desiring to demonstrate full or partial compliance with the sales requirements by the redemption of credits, shall surrender sufficient credits, as established in this paragraph (c). In lieu of selling a clean-fuel vehicle, a manufacturer shall surrender credits equal to the credit value for the corresponding vehicle class and model year found in table B–1.3 or table B–2.3 of this subpart.

(d) *Participation in the credit program.* (1) During certification, the manufacturer shall calculate the projected credits, if any, based on quarterly sales projections.

(2) Based on information from paragraph (d)(1) of this section, each manufacturer's certification application under this section must demonstrate:

(i) That at the end of the model-year production, there is a net vehicle credit balance of zero or more with any credits obtained from averaging, trading, or banking.

(ii) It is recommended but not required that the source of the credits to be used to comply with the minimum sales requirements be stated. All such reports should include all credits involved in averaging, trading, or banking.

(3) During the model year, manufacturers must:

(i) Monitor projected versus actual production to be certain that compliance with the sales requirement is achieved at the end of the model year.

(ii) Provide the end of model year reports required under this subpart.

(iii) Maintain the quarterly records required under this subpart.

(4) Projected credits based on information supplied in the certification application may be used to obtain a certificate of conformity. However, any such credits may be revoked based on review of end-of-model year reports, follow-up audits, and any other verification steps deemed appropriate by the Administrator.

(5) Compliance under averaging, banking, and trading will be determined at the end of the model year.

(6) If EPA or the manufacturer determines that a reporting error occurred on an end-of-year report previously submitted to EPA under this section, the manufacturer's credits and credit calculations will be recalculated.

(i) If EPA review of a manufacturer's end-of-year report indicates an inadvertent credit shortfall, the manufacturer will be permitted to purchase the necessary credits to bring the credit balance to zero.

(ii) If within 90 days of receipt of the manufacturer's end-of-year report, EPA review determines a reporting error in the manufacturer's favor (i.e., resulting in a positive credit balance) or if the manufacturer discovers such an error within 90 days of EPA receipt of the end-of-year report, the credits will be restored for use by the manufacturer.

(e) *Averaging.* Averaging will only be allowed between clean-fuel vehicles under 8500 lbs gvwr.

(f) *Banking.* (1) *Credit deposits.* (i) Under this program, credits can be banked starting in the 1992 model year.

(ii) A manufacturer may bank credits only after the end of the model year and after EPA has reviewed its end-of-year report. During the model year and before submittal of the end-of-year report, credits originally designated in the certification process for banking will be considered reserved and may be redesignated for trading or averaging.

(2) *Credit withdraws.* (i) After being generated, banked/reserved credits shall be available for use and shall maintain their original value for an infinite period of time.

(ii) A manufacturer withdrawing banked credits shall indicate so during certification and in its credit reports.

(3) Banked credits may be used in averaging, trading, or in any combination thereof, during the certification period. Credits declared for banking from the previous model year but unreviewed by EPA may also be used. However, they may be revoked at a later time following EPA review of the end-of-year report or any subsequent audit actions.

(g) *Early Credits.* Beginning in model year 1992 appropriate credits, as determined from the given credits tables, will be given for the sale of vehicles certified to the clean-fuel vehicle standards for TLEV's, LEV's, ULEV's, and ZEV's, where appropriate, from model year 1992 to the beginning of the Pilot Program sales requirements in 1996. The actual calculation of such credits shall not begin until model year 1996.

Tables to subpart B of part 88

TABLE B–1.—CREDIT TABLE FOR PHASE I: VEHICLE EQUIVALENTS FOR LIGHT-DUTY VEHICLES AND LIGHT-DUTY TRUCKS

TABLE B–1.1.—CREDIT GENERATION: SELLING MORE CLEAN-FUEL VEHICLES THAN REQUIRED

[Phase I: Effective Through 2000 Model-Year]

Vehicle emission category	LDV & LDT ≤6000 gvwr ≤3750 lvw	LDT ≤6000 gvwr >3750 lvw ≤5750 lvw	LDT >6000 gvwr ≤3750 tw	LDT >6000 gvwr >3750 tw ≤5750 tw	LDT >6000 gvwr >5750 tw
TLEV	1.00	1.28	(1)	(1)	(1)
LEV	1.40	1.76	1.00	1.28	1.56
ULEV	1.68	2.16	1.40	1.76	2.18
ZEV	2.00	2.56	2.00	2.56	3.12

TABLE B–1.2.—CREDIT GENERATION: SELLING MORE STRINGENT CLEAN-FUEL VEHICLES

Vehicle emission category	LDV & LDT ≤6000 gvwr ≤3750 lvw	LDT ≤6000 gvwr >3750 lvw ≤5750 lvw	LDT >6000 gvwr ≤3750 tw	LDT >6000 gvwr >3750 tw ≤5750 tw	LDT >6000 gvwr >5750 tw
TLEV	0.00	0.00	(1)	(1)	(1)
LEV	0.40	0.48	0.00	0.00	0.00
ULEV	0.68	0.88	0.40	0.48	0.62
ZEV	1.00	1.28	1.00	1.28	1.56

TABLE B–1.3.—CREDIT NEEDED IN LIEU OF SELLING CLEAN-FUEL VEHICLE

Vehicle emission category	LDV & LDT ≤6000 gvwr ≤3750 lvw	LDT ≤6000 gvwr >3750 lvw ≤5750 lvw	LDT >6000 gvwr ≤3750 tw	LDT >6000 gvwr >3750 tw ≤5750 tw	LDT >6000 gvwr >5750 tw
TLEV	1.00	1.28	(1)	(1)	(1)
LEV	.....	.....	1.00	1.28	1.56

Note: [1]There is no TLEV category for this vehicle class.

TABLE B–2.—CREDIT TABLE FOR PHASE II: VEHICLE EQUIVALENTS FOR LIGHT-DUTY VEHICLES AND LIGHT-DUTY TRUCKS

TABLE B–2.1.—CREDIT GENERATION: SELLING MORE CLEAN-FUEL VEHICLES THAN REQUIRED

[Phase II: Effective 2001 and Subsequent Model-Years]

Vehicle emissions category	LDV & LDT ≤6000 gvwr ≤3750 lvw	LDT ≤6000 gvwr >3750 lvw ≤5750 lvw	LDT >6000 gvwr ≤3750 tw	LDT >6000 gvwr >3750 tw ≤5750 tw	LDT >6000 gvwr >5750 tw
LEV	1.00	1.26	0.71	0.91	1.11
ULEV	1.20	1.54	1.00	1.26	1.56
ZEV	1.43	1.83	1.43	1.83	2.23

TABLE B–2.2.—CREDIT GENERATION: SELLING MORE STRINGENT CLEAN-FUEL VEHICLES

Vehicle emissions category	LDV & LDT ≤6000 gvwr ≤3750 lvw	LDT ≤6000 gvwr >3750 lvw ≤5750 lvw	LDT >6000 gvwr ≤3750 tw	LDT >6000 gvwr >3750 tw ≤5750 tw	LDT >6000 gvwr >5750 tw
LEV	0.00	0.00	0.00	0.00	0.00
ULEV	0.20	0.28	0.29	0.34	0.45
ZEV	0.43	0.57	0.71	0.91	1.11

TABLE B–2.3.—CREDIT NEEDED IN LIEU OF SELLING CLEAN-FUEL VEHICLES

Vehicle emissions category	LDV & LDT ≤6000 gvwr ≤3750 lvw	LDT ≤8000 gvwr >3750 lvw ≤5750 lvw	LDT >6000 gvwr ≤3750 tw	LDT >6000 gvwr >3750 tw ≤5750 tw	LDT >6000 gvwr >5750 tw
LEV	1.00	1.26	0.71	0.91	1.11

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Thursday
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Part IV

The President

Proclamation 6515—To Modify the Harmonized Tariff Schedule of the United States, To Extend Tariff Reductions on Certain Tropical Products, To Reduce Duties on Peach, Apricot, Raspberry, or Cherry Jams, and for Other Purposes

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Presidential Documents

Title 3—

The President

Proclamation 6515 of December 16, 1992

To Modify the Harmonized Tariff Schedule of the United States, To Extend Tariff Reductions on Certain Tropical Products, To Reduce Duties on Peach, Apricot, Raspberry, or Cherry Jams, and for Other Purposes

By the President of the United States of America

A Proclamation

1. Section 1205(a) of the Omnibus Trade and Competitiveness Act of 1988 ("1988 Act") (19 U.S.C. 3005(a)) directs the United States International Trade Commission ("Commission") to keep the Harmonized Tariff Schedule of the United States ("HTS") under continuous review and periodically to recommend to the President such modifications to the HTS as the Commission considers necessary or appropriate. Section 1205(a) sets forth five categories of such potential modifications to the HTS, including changes to conform the HTS with amendments made to the International Convention on the Harmonized Commodity Description and Coding System ("Convention"), to promote the uniform application of the Convention and its Annex, to ensure that the HTS is kept up-to-date in light of changes in technology or in patterns of international trade, to alleviate unnecessary administrative burdens, and to make technical rectifications.

2. Section 1205(d) of the 1988 Act (19 U.S.C. 3005(d)) provides that the Commission may not recommend any modification unless it is consistent with the Convention and that any amendment thereto recommended for adoption is consistent with sound nomenclature principles, ensures substantial rate neutrality, and does not alter existing conditions of competition for the affected United States industry, labor, or trade. Section 1205(d) further provides that any change to a rate of duty must be consequent to, or necessitated by, nomenclature modifications that are recommended under this section.

3. Pursuant to section 1205(b) of the 1988 Act (19 U.S.C. 3005(b)), the Commission instituted Investigations Nos. 1205–1 and 1205–2. The Commission included in its notices of investigation the proposed changes to the HTS. Pursuant to section 1205(c) of the 1988 Act (19 U.S.C. 3005(c)), taking into account the views and submissions of Federal Government agencies and other interested parties, the Commission submitted to the President two reports, one in March 1991 (with a June addendum and revision in May 1992) and the second in November 1991, recommending changes to the HTS in accordance with the provisions of section 1205. The Commission included in its reports copies or summaries of the submissions received in the investigations, together with a statement of the probable economic effect of each recommended change on any industry in the United States.

4. Pursuant to section 1206(a) of the 1988 Act (19 U.S.C. 3006(a)), I have determined that the recommended modifications are in conformity with United States obligations under the Convention and do not run counter to the national economic interest of the United States. The report and lay-over requirements of section 1206(b) of the 1988 Act (19 U.S.C. 3006(b)) have been met.

5. Pursuant to section 1102(a) of the 1988 Act (19 U.S.C. 2902(a)), on December 5, 1988, the United States entered into a trade agreement providing

for the reduction of rates of duty applicable to imports of certain tropical products. This trade agreement with other contracting parties to the General Agreement on Tariffs and Trade ("GATT") (61 Stat. (pts. 5 and 6)), as amended, committed the United States to make, on a provisional basis, tariff reductions on enumerated tropical products.

6. Pursuant to section 1102(a) of the 1988 Act, by Proclamation 6030 of September 28, 1989, and specifically Annex II thereto, I proclaimed temporary reductions of existing duties on imports of such enumerated tropical products, to be effective through December 31, 1992.

7. Pursuant to the 1988 Act, I have determined that the modification or continuance of existing duties is required or appropriate to carry out the trade agreement on tropical products. Accordingly, I have decided to extend the effective period of the temporary duty reductions on such enumerated tropical products, as set forth in headings 9903.10.01 through 9903.10.42, inclusive, of the HTS, through December 31, 1993.

8. Pursuant to subtitle B of title I of the 1988 Act (19 U.S.C. 3001–3012), by Proclamation 5911 of November 19, 1988, the United States adopted and implemented the HTS, comprising the Tariff Schedules of the United States ("TSUS") (19 U.S.C. 1202) converted into the format of the International Convention on the Harmonized Commodity Description and Coding System ("Harmonized System"). Included in the HTS, effective January 1, 1989, were new provisions covering jams of peaches, apricots, raspberries, or cherries, falling under Harmonized System subheading 2007.99. The Rates of Duty 1-General subcolumn on such products under these new HTS provisions were higher than the corresponding column 1 duty rates under the pertinent former TSUS items, because of procedures generally applied during the tariff conversion and definitional differences between the two nomenclature systems.

9. Section 312 of the Customs and Trade Act of 1990 ("1990 Act") (Public Law 101–382; 104 Stat. 666) temporarily reduced the most-favored-nation (MFN) duty rates (reflected in the column 1 rates of duty) on such imported products to the levels applicable under the former TSUS, effective through December 31, 1992. Section 312(b) of the 1990 Act authorizes the President to proclaim permanent modifications in column 1 rates of duty to restore the tariff treatment applicable under the former TSUS, upon a determination that appropriate trade concessions, including the correction of errors and oversights in foreign tariff schedules, have been obtained.

10. Accordingly, following negotiations, I have determined that appropriate trade concessions (specifically, a restoration by the European Economic Community ("EEC") of the duty rates on inedible mixtures of animal and vegetable fats and oils that applied before the EEC's implementation of a Harmonized System-based tariff in 1988) have been obtained, and that it is necessary and appropriate to restore the tariff treatment applicable under the TSUS to jams of peaches, apricots, raspberries, or cherries, falling under Harmonized System subheading 2007.99.

11. Finally, in order to effect in the HTS certain conforming changes omitted in Proclamation 6282 of April 25, 1991, Proclamation 6343 of September 28, 1991, Proclamation 6446 of June 15, 1992, and Proclamation 6455 of July 2, 1992, I have determined that it is necessary and appropriate to modify the HTS.

12. Section 604 of the Trade Act of 1974 ("Trade Act") (19 U.S.C. 2483) authorizes the President to embody in the HTS the substance of the provisions of that Act, and of other Acts affecting import treatment, and actions thereunder, including removal, modification, continuance, or imposition of any rate of duty or other import restriction. Section 1206(c) of the 1988 Act (19 U.S.C. 3006(c)) provides that any modifications proclaimed by the President under section 1206(a) of that Act may not take effect before the 15th day after the date on which the text of the proclamation is published in the **Federal Register**.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States of America, including but not limited to sections 1102 and 1206 of the 1988 Act, section 312 of the 1990 Act, and section 604 of the Trade Act, do proclaim that:

(1) The HTS is modified as set forth in Annex I to this proclamation.

(2) In order to provide for the continuation of previously proclaimed staged duty reductions on Canadian goods in the HTS provisions modified in Annex I to this proclamation, effective with respect to goods originating in the territory of Canada that are entered, or withdrawn from warehouse for consumption, on or after the dates specified in Annex II to this proclamation, the rate of duty in the HTS set forth in the Rates of Duty 1–Special subcolumn followed by the symbol "CA" in parentheses for each of the HTS subheadings enumerated in such Annex shall be deleted and the rate of duty provided in such Annex inserted in lieu thereof effective with respect to such goods on the dates specified.

(3) In order to provide for the continuation of previously proclaimed duty reductions for goods in the HTS provisions modified in Annex I to this proclamation that are the products of countries designated as beneficiary countries for purposes of the Caribbean Basin Economic Recovery Act, as amended ("CBERA") (19 U.S.C. 2701 *et seq.*), or the Andean Trade Preference Act ("ATPA") (19 U.S.C. 3201 *et seq.*), effective with respect to goods that are the products of countries designated as beneficiary countries for purposes of the CBERA or the ATPA that are entered, or withdrawn from warehouse for consumption, on or after the dates specified in Annex III to this proclamation, the rate of duty in the HTS set forth in the Rates of Duty 1-Special subcolumn followed by the symbol "E,J" in parentheses for each of the HTS subheadings enumerated in such Annex shall be deleted and the rate of duty provided in such Annex inserted in lieu thereof effective with respect to such goods on the dates specified.

(4) The duty reductions set forth in HTS headings 9903.10.01 through 9903.10.42 shall be effective with respect to goods entered, or withdrawn from warehouse for consumption, through December 31, 1993.

(5) Heading 2007 of the HTS is modified as provided in Annex IV to this proclamation.

(6) In order to provide for certain conforming changes omitted in aforementioned proclamations, the HTS is modified as set forth in Annex V to this proclamation.

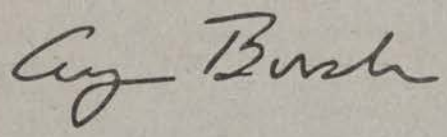
(7) Any provisions of previous proclamations inconsistent with the provisions of this proclamation are hereby superseded to the extent of such inconsistency.

(8)(a) The modifications made by paragraph (1) of this proclamation shall be effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after January 1, 1993, or on or after the 15th day after the date of publication of this proclamation in the **Federal Register**, whichever is later.

(b) The modifications made by paragraphs (2), (3), and (6) of this proclamation shall be effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after the dates set forth in Annexes II, III, and V to this proclamation.

(c) The modifications made by paragraphs (4) and (5) of this proclamation shall be effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after January 1, 1993.

IN WITNESS WHEREOF, I have hereunto set my hand this sixteenth day of December, in the year of our Lord nineteen hundred and ninety-two, and of the Independence of the United States of America the two hundred and seventeenth.



Billing code 3190-01-M

Annex I

MODIFICATIONS TO THE HARMONIZED TARIFF SCHEDULE
OF THE UNITED STATES (HTS)

The HTS is modified as provided below, with bracketed matter included to assist in the understanding of the proclaimed modifications. The following supersedes matter now in the HTS. The subheadings and superior text are set forth in columnar format, and material in such columns is inserted in the columns of the HTS designated "Heading/Subheading", "Article Description", "Rates of Duty 1-General", "Rates of Duty 1-Special", and "Rates of Duty 2", respectively.

Effective with respect to articles that are entered, or withdrawn from warehouse for consumption, on or after January 1, 1993, or on or after the fifteenth day after the date of publication of this proclamation in the Federal Register, whichever is later.

1. Subparagraph (b) of rule 5 of the General Rules of Interpretation is modified by deleting the expression "does not apply" and by inserting the expression "is not binding" in lieu thereof.

2. The following new note 2 to chapter 3 is inserted:

"2. In this chapter the term "pellets" means products which have been agglomerated either directly by compression or by the addition of a small quantity of binder."

3. The article description for heading 0305 is modified by deleting the expression "fish meal" and by inserting the expression "flours, meals and pellets of fish," in lieu thereof.

4. The article description for subheading 0305.10 is modified by deleting the expression "Fish meal" and by inserting the expression "Flours, meals and pellets of fish," in lieu thereof.

5. The article description for heading 0306 is modified by inserting after the word "brine" and before the colon the expression "; flours, meals and pellets of crustaceans, fit for human consumption".

6. The article description for subheadings 0306.19.00 and 0306.29.00 is deleted and the following is inserted for each subheading in lieu thereof:

"Other, including flours, meals and pellets of crustaceans, fit for human consumption"

7. The article description for heading 0307 is modified by inserting after the word "brine" and before the colon the expression "; flours, meals and pellets of aquatic invertebrates other than crustaceans, fit for human consumption".

8. The superior text, "Other:", immediately preceding subheading 0307.91.00 is deleted and the following is inserted in lieu thereof:

"Other, including flours, meals and pellets of aquatic invertebrates other than crustaceans, fit for human consumption:"

9. The following new note 3 to chapter 4 is inserted:

"3. This chapter does not cover:

(a) Products obtained from whey, containing by weight more than 95 percent lactose, expressed as anhydrous lactose calculated on the dry matter (heading 1702); or

(b) Albumins (including concentrates of two or more whey proteins, containing by weight more than 80 percent whey proteins, calculated on the dry matter) (heading 3502) or globulins (heading 3504)."

Annex I (con.)

10. The following new subheading note 1 to chapter 4 is inserted:

"Subheading Note

1. For the purposes of subheading 0404.10, the expression "modified whey" means products consisting of whey constituents, i.e., whey from which all or part of the lactose, proteins or minerals have been removed, whey to which natural whey constituents have been added, and products obtained by mixing natural whey constituents."

11.(a) Subheading 0404.10 is deleted and subheading 0404.10 and new subheadings 0404.10.05, 0404.10.07, and 0404.10.09 and new superior texts thereto are inserted, as follows:

	[Whey, whether or not...:]			
"0404.10	Whey and modified whey, whether or not concentrated or containing added sugar or other sweetening matter:			
	Modified whey:			
0404.10.05	Whey protein concentrates.....	10%	Free (A,E,IL,J) 5% (CA)	20%
	Other:			
0404.10.07	Containing over 5.5 percent by weight of butterfat and not packaged for retail sale.....	16%	Free (E,IL,J) 8% (CA)	20%
0404.10.09	Other.....	10%	Free (E,IL,J) 5% (CA)	20%
	Other:"			

(b) The article description for subheadings 0404.10.20 and 0404.10.40 shall have the same degree of indentation as that of subheading 0404.10.05.

(c) Subheading 0404.90.05 is deleted.

(d) Subheadings 0404.90.40 and 0404.90.60 are renumbered as 0404.90.45 and 0404.90.65, respectively.

(e) The article description for subheading 9904.10.75 is modified by deleting the expression "0404.90.60," and inserting the expression "0404.10.09, 0404.90.65," in lieu thereof.

(f) The article description for subheading 9904.10.81 is modified by inserting a comma after the expression "by weight of butterfat" and by deleting the expression "0404.90.40, 0404.90.60," and inserting the expression "0404.10.07, 0404.10.09, 0404.90.45, 0404.90.65" in lieu thereof.

12. The article description for subheading 0406.10 is deleted and the following is inserted in lieu thereof:

"Fresh (unripened or uncured) cheese, including whey cheese, and curd:"

13. Note 3(c) to chapter 7 is deleted and the following is inserted in lieu thereof:

"(c) Flour, meal, flakes, granules and pellets of potatoes (heading 1105);"

Annex I (con.)

14 The following new note 3 to chapter 8 is inserted:

"3. Dried fruit or dried nuts of this chapter may be partially rehydrated, or treated for the following purposes.

(a) For additional preservation or stabilization (e.g., by moderate heat treatment, sulfuring, the addition of sorbic acid or potassium sorbate)

(b) To improve or maintain their appearance (e.g., by the addition of vegetable oil or small quantities of glucose syrup)

provided that they retain the character of dried fruit or dried nuts."

15.(a) Heading 0902 and subheadings 0902.10.00 and 0902.20.00 are deleted and the following is inserted in lieu thereof:

"0902	Tea, whether or not flavored:			
0902.10	Green tea (not fermented) in immediate packings of a content not exceeding 3 kg:			
0902.10.10	Flavored.....	10%	Free (A,E,IL,J) 5% (CA)	20%
0902.10.90	Other.....	Free		Free
0902.20	Other green tea (not fermented):			
0902.20.10	Flavored.....	10%	Free (A,E,IL,J) 5% (CA)	20%
0902.20.90	Other.....	Free		Free"

(b) Subheading 2106.90.60 is renumbered as 2106.90.65.

16. The article description for heading 0909 is deleted and the following is inserted in lieu thereof:

"Seeds of anise, badian, fennel, coriander, cumin or caraway; juniper berries:"

17. The article description for subheading 0909.50.00 is deleted and the following is inserted in lieu thereof:

"Seeds of fennel; juniper berries"

18. The article description for heading 1105 is deleted and the following is inserted in lieu thereof:

"Flour, meal, flakes, granules and pellets of potatoes:"

19. The article description for subheading 1105.20.00 is deleted and the following is inserted in lieu thereof:

"Flakes, granules and pellets"

20.(a) The superior text, "Industrial monocarboxylic fatty acids:", immediately preceding subheading 1519.11.00 is deleted and the following is inserted in lieu thereof:

"Industrial monocarboxylic fatty acids; acid oils from refining:"

(b) Subheading 1519.20.00 is deleted.

(c) Subheadings 1519.30, 1519.30.20, 1519.30.40 and 1519.30.60 are renumbered as 1519.20, 1519.20.20, 1519.20.40 and 1519.20.60, respectively.

21. The article description for subheading 1604.14 is deleted and the following is inserted in lieu thereof:

"Tunas, skipjack and bonito (Sarda spp.):"

Annex I (con.)

22. The article description for the superior text immediately preceding subheading 1604.14.70 is modified by deleting the expression "Atlantic bonito:" and by inserting "Bonito (Sarda spp.):" in lieu thereof.

23. The article description for subheading 1806.20 is modified by deleting the expression "blocks or slabs" and by inserting the expression "blocks, slabs or bars" in lieu thereof.

24. Note 2 to chapter 19 is deleted and the following is inserted in lieu thereof:

"2. For the purposes of heading 1901, the terms "flour" and "meal" mean:

(a) Cereal flour and meal of chapter 11, and

(b) Flour, meal and powder of vegetable origin of any chapter, other than flour, meal or powder of dried vegetables (heading 0712), of potatoes (heading 1105) or of dried leguminous vegetables (heading 1106)."

25. The article description for heading 2009 is modified by inserting the expressions "not fortified with vitamins or minerals," after the expression "Fruit juices (including grape must) and vegetable juices,".

26. Notes 1(c) through 1(g), inclusive, to chapter 21 are redesignated as 1(d) through 1(h), respectively, and the following new note 1(c) is inserted:

"(c) Flavored tea (heading 0902);"

27. Chapter 21 is modified by inserting new additional U.S. notes 1 and 2, as follows:

"Additional U.S. Notes

1. Subheadings 2106.90.16 and 2106.90.19 cover vitamin or mineral fortified fruit or vegetable juices that are imported only in concentrated form. Such juices imported in non-concentrated form are classifiable in subheadings 2202.90.30, 2202.90.35 or 2202.90.39, as appropriate.

2. For the purposes of subheadings 2106.90.16 and 2106.90.19:

(a) The term "liter" in the "Rates of Duty" column of the provisions applicable to fruit juices means liter of reconstituted fruit juice;

(b) The term "reconstituted fruit juice" means the product which can be obtained by mixing the imported concentrate with water in such proportion that the product will have a Brix value equal to that found by the Secretary of the Treasury from time to time to be the average Brix value of like natural unconcentrated juice in the trade and commerce of the United States;

(c) The term "Brix value" means the refractometric sucrose value of the juice, adjusted to compensate for the effect of any added sweetening materials, and thereafter corrected for acid;

Annex I (con.)

27 (con.):

(d) In determining the number of liters of reconstituted fruit juice which can be obtained from a concentrate, the degree of concentration shall be calculated on a volume basis to the nearest 0.5 degree, as determined by the ratio of the Brix value of the imported concentrated juice to that of the reconstituted juice, corrected for differences of specific gravity of the juices. Any juice having a degree of concentration of less than 1.5 (as determined before correction to the nearest 0.5 degree) shall be regarded as a natural unconcentrated juice; and

(e) In determining the degree of concentration of mixed fruit juices, the mixture shall be considered as being wholly of the component juice having the lowest Brix value."

28. Subheading 2106.90 is modified by inserting the following new subheadings, with superior text, in numerical sequence:

	[Food preparations...:]				
	[Other:]				
	"Fruit or vegetable juices, fortified with vitamins or minerals:				
2106.90.16	Orange juice.....	9.25¢/liter	Free (E,J) 4.6¢/liter (CA)	18¢/liter	
2106.90.19	Other.....	The rate applicable to the natural juice in heading 2009	Free (E,J) The rate applicable to the natural juice in heading 2009 (A,CA,IL)	The rate applicable to the natural juice in heading 2009"	

29. Notes 1(a) through 1(e), inclusive, to chapter 22 are redesignated as 1(b) through 1(f), respectively, and the following new note 1(a) is inserted:

"(a) Products of this chapter (other than those of heading 2209) prepared for culinary purposes and thereby rendered unsuitable for consumption as beverages (generally heading 2103);"

30. Additional U.S. notes 2 through 8, inclusive, to chapter 22 are redesignated as 3 through 9, respectively, and the following new additional U.S. note 2 is inserted:

"2. Subheadings 2202.90.30, 2202.90.35 and 2202.90.39 cover vitamin or mineral fortified fruit or vegetable juices that are imported only in non-concentrated form. Such juices imported in concentrated form are classifiable in subheadings 2106.90.16 or 2106.90.19, as appropriate."

Annex I (con.)

31.(a) Subheading 2202.90 is modified by inserting the following new subheadings, with superior text, in numerical sequence:

	[Waters, including mineral...:] [Other:] "Fruit or vegetable juices, fortified with vitamins or minerals: Orange juice:			
2202.90.30	Not made from a juice having a degree of concentration of 1.5 or more (as determined before correction to the nearest 0.5 degree).....	5.3¢/liter	Free (E,J) 2.6¢/liter (CA)	18¢/liter
2202.90.35	Other.....	9.25¢/liter	Free (E,J) 4.6¢/liter (CA)	18¢/liter
2202.90.39	Other.....	The rate applicable to the natural juice in heading 2009	Free (E,J) The rate applicable to the natural juice in heading 2009 (A,CA,IL)	The rate applicable to the natural juice in heading 2009"

(b) Subheadings 2009.19.20 and 2009.19.40 are renumbered as 2009.19.25 and 2009.19.45, respectively.

32. The article description for heading 2206.00 is deleted and the following is inserted in lieu thereof:

"Other fermented beverages (for example, cider, perry, mead); mixtures of fermented beverages and mixtures of fermented beverages and non-alcoholic beverages not elsewhere specified or included:"

33. The article description for heading 2501.00.00 is modified by deleting the expression "whether or not in aqueous solution" and by inserting the expression "whether or not in aqueous solution or containing added anticaking or free-flowing agents" in lieu thereof.

34. The article description for subheading 2528.10.00 is deleted and the following is inserted in lieu thereof:

"Natural sodium borates and concentrates thereof (whether or not calcined)"

35. Note 6(d) to chapter 28 is modified by deleting the expression "0.002 microcurie per gram;" and by inserting the expression "74 becquerels per gram (0.002 microcurie per gram);"

36. The article description for heading 2818 is deleted and the following is inserted in lieu thereof:

"Artificial corundum, whether or not chemically defined; aluminum oxide; aluminum hydroxide:"

37. The article description for subheading 2818.10 is deleted and the following is inserted in lieu thereof:

"Artificial corundum, whether or not chemically defined:"

38. The article description for subheading 2818.20.00 is deleted and the following is inserted in lieu thereof:

"Aluminum oxide, other than artificial corundum"

Annex I (con.)

39. The article description for heading 2850.00 is deleted and the following is inserted in lieu thereof:

"Hydrides, nitrides, azides, silicides and borides, whether or not chemically defined, other than compounds which are also carbides of heading 2849:"

40.(a) Subheadings 3301.30, 3301 30.10, 3301.30.50 and 3301.90.00 are superseded by:

	[Essential oils...:]			
"3301.30.00	Resinoids	Free		Free
3301.90	Other:			
3301.90.10	Extracted oleoresins	6%	Free (A*,CA,E, IL,J)	25%
3301.90.50	Other	Free		20%"

(b) General note 3(c)(ii)(D) to the HTS is modified by deleting "3301.30.10 India" and inserting, in numerical sequence, "3301.90.10 India" in lieu thereof.

41. Note 5 to chapter 34 is modified by inserting in (b) of the second paragraph the expression "refined or" between the words "not" and "colored"

42. The article description for heading 3502 is deleted and the following is inserted in lieu thereof:

"Albumins (including concentrates of two or more whey proteins, containing by weight more than 80 percent whey proteins, calculated on the dry matter), albuminates and other albumin derivatives:"

43. The article description for subheading 3707.10.00 is deleted and the following is inserted in lieu thereof:

"Sensitizing emulsions"

44. The article description for subheading 3806.10.00 is deleted and the following is inserted in lieu thereof:

"Rosin and resin acids"

45. The article description for subheading 3809.91.00 is deleted and the following is inserted in lieu thereof:

"Of a kind used in the textile or like industries".

46. The article description for subheading 3809.92 is deleted and the following is inserted in lieu thereof:

"Of a kind used in the paper or like industries:"

47. The article description for subheading 3809.99 is deleted and the following is inserted in lieu thereof:

"Of a kind used in the leather or like industries:"

48.(a) The article description for heading 4202, for subheadings 4202.22, 4202.22.15, 4202.32, and 4202.92, and for the superior text to subheading 4202.32.10 is modified by deleting the expression "of plastic sheeting" and by inserting the expression "of sheeting of plastics" in lieu thereof. The article description for heading 4202 is modified by deleting the expression "with such materials" and by inserting the expression "with such materials or with paper" in lieu thereof.

Annex I (con.)

48. (con.):

(b) Subheading 4202.29.00 is superseded by:

	[Trunks, suitcases,...:] [Handbags,...:]				
"4202.29	Other: Of materials (other than leather, composition leather, sheeting of plastics, textile materials, vulcanized fiber or paperboard) wholly or mainly covered with paper:				
4202.29.10	Of plastics	5.3%	Free (A,E,IL,J) 2.6% (CA)	80%	
4202.29.20	Of wood	5.1%	Free (A,E,IL,J) 2.5% (CA)	33 1/3%	
4202.29.50	Other	7.8%	Free (E,IL,J) 3.9% (CA)	110%	
4202.29.90	Other	20%	Free (CA,IL) 19% (E,J)	45%"	

(c) Subheading 4202.39.00 is superseded by:

	[Trunks, suitcases,...:] [Articles...:]				
"4202.39	Other: Of materials (other than leather, composition leather, sheeting of plastics, textile materials, vulcanized fiber or paperboard) wholly or mainly covered with paper:				
4202.39.10	Of plastics	5.3%	Free (A,E,IL,J) 2.6% (CA)	80%	
4202.39.20	Of wood	5.1%	Free (A,E,IL,J) 2.5% (CA)	33 1/3%	
4202.39.50	Other	7.8%	Free (E,IL,J) 3.9% (CA)	110%	
4202.39.90	Other	20%	Free (A,CA,E,IL, J)	45%"	

(d) Subheading 4202.99.00 is superseded by:

	[Trunks, suitcases,...:] [Other:]				
"4202.99	Other: Of materials (other than leather, composition leather, sheeting of plastics, textile materials, vulcanized fiber or paperboard) wholly or mainly covered with paper:				
4202.99.10	Of plastics	3.4%	Free (A,E,IL,J) 1.7% (CA)	80%	
	Of wood:				
4202.99.20	Not lined with textile fabrics	6.7%	Free (A,E,IL,J) 3.3% (CA)	33 1/3%	
4202.99.30	Lined with textile fabrics	2.2¢/kg + 2.9%	Free (E,IL,J) 1.1¢/kg + 1.4% (CA)	11¢/kg + 20%	
4202.99.50	Other	7.8%	Free (E,IL,J) 3.9% (CA)	110%	
4202.99.90	Other	20%	Free (CA,IL) 19% (E,J)	45%"	

(e) Subheadings 3924.90.50, 3926.90.90, 4420.90.40, 4420.90.60, 4421.90.90 and 7326.90.30 are renumbered as 3924.90.55, 3926.90.95, 4420.90.45, 4420.90.65, 4421.90.95 and 7326.90.35, respectively.

(f) The article descriptions for headings 9902.44.21 and 9902.44.22 and subheading 9905.44.15 are modified by deleting the expression "4421.90.90" and inserting the expression "4421.90.95" in lieu thereof.

49. The article description for subheading 4820.30.00 is deleted and the following is inserted in lieu thereof:

"Binders (other than book covers), folders and file covers"

Annex I (con.)

50. The following new second paragraph is inserted in note 2(A) to section XI:

"When no one textile material predominates by weight, the goods are to be classified as if consisting wholly of that one textile material which is covered by the heading which occurs last in numerical order among those which equally merit consideration."

51. Note 7(a)(iv) to chapter 59 is modified by deleting the word "fabric" and by inserting the word "fabrics" in lieu thereof.

52. The article description for subheading 5911.10 is deleted and the following is inserted in lieu thereof:

"Textile fabrics, felt and felt-lined woven fabrics, coated, covered or laminated with rubber, leather or other material, of a kind used for card clothing, and similar fabrics of a kind used for other technical purposes:"

53. Note 8 to chapter 61 is deleted and the following is inserted in lieu thereof:

"8. Garments of this chapter designed for left over right closure at the front shall be regarded as men's or boys' garments, and those designed for right over left closure at the front as women's or girls' garments. These provisions do not apply where the cut of the garment clearly indicates that it is designed for one or other of the sexes.

Garments which cannot be identified as either men's or boys' garments or as women's or girls' garments are to be classified in the headings covering women's or girls' garments."

54.(a) New subheading 6115.93.15 is inserted, as follows, in numerical sequence:

	[Panty hose, tights,...:]				
	[Other:]				
	[Of synthetic fibers:]				
"6115.93.15	Surgical compression stockings for orthopedic purposes, other than stockings merely for the treatment of varicose veins.....	5.8%	Free (A,E,IL,J) 2.9% (CA)		40%"

(b) Subheading 9021.19.80 is renumbered as 9021.19.85.

55. Note 8 to chapter 62 is deleted and the following is inserted in lieu thereof:

"8. Garments of this chapter designed for left over right closure at the front shall be regarded as men's or boys' garments, and those designed for right over left closure at the front as women's or girls' garments. These provisions do not apply where the cut of the garment clearly indicates that it is designed for one or other of the sexes.

Garments which cannot be identified as either men's or boys' garments or as women's or girls' garments are to be classified in the headings covering women's or girls' garments."

Annex I (con.)

56.(a) Additional U.S. note 4 to chapter 64 is modified by deleting the first sentence thereof, and by inserting the expression "of subheading 6406.10" after the expression "Provisions" in the second sentence thereof.

(b) The article description for heading 6406 is deleted and the following is inserted in lieu thereof:

"Parts of footwear (including uppers whether or not attached to soles other than outer soles); removable insoles, heel cushions and similar articles; gaiters, leggings and similar articles, and parts thereof:"

57. Notes 3(c) and 3(n) to chapter 71 are deleted and the following is inserted, in alphabetical order, in lieu thereof:

"(c) Goods of chapter 32 (for example, lustres);"

"(n) Articles classified in chapter 96 by virtue of note 4 to that chapter; or"

58. The article description for subheading 7308.40.00 is deleted and the following is inserted in lieu thereof:

"Equipment for scaffolding, shuttering, propping or pit-propping"

59. The article description for heading 8416 is deleted and the following is inserted in lieu thereof:

"Furnace burners for liquid fuel, for pulverized solid fuel or for gas; mechanical stokers, including their mechanical grates, mechanical ash dischargers and similar appliances; parts thereof:"

60. The article description for subheading 8416.30.00 is deleted and the following is inserted in lieu thereof:

"Mechanical stokers, including their mechanical grates, mechanical ash dischargers and similar appliances"

61. The article description for heading 8426 is modified by deleting the word "Derricks" and by inserting the expression "Ships' derricks" in lieu thereof.

62. The article description for heading 8470 is deleted and the following is inserted in lieu thereof:

"Calculating machines; accounting machines, postage-franking machines, ticket-issuing machines and similar machines, incorporating a calculating device; cash registers:"

63. The article description for heading 8521 is deleted and the following is inserted in lieu thereof:

"Video recording or reproducing apparatus, whether or not incorporating a video tuner:"

64. Heading 8528 and subheadings 8528.10, 8528.10.40 and 8528.10.80 are deleted and the following is inserted in lieu thereof:

"8528	Television receivers (including video monitors and video projectors), whether or not incorporating radiobroadcast receivers or sound or video recording or reproducing apparatus:			
8528.10	Color:			
8528.10.30	Incorporating video recording or reproducing apparatus	3.9%	Free (A,E,IL,J) 1.9% (CA)	25%
8528.10.60	Other	5%	Free (B,E,IL,J) 2.5% (CA)	35%"

Annex I (con.)

65. Note 3 to chapter 87 is deleted, and notes 4 and 5 to chapter 87 are redesignated as 3 and 4, respectively.

66. The article description for heading 8702 is deleted and the following is inserted in lieu thereof:

"Motor vehicles for the transport of ten or more persons, including the driver:"

67. Notes 1(b) through 1(l), inclusive, to chapter 90 are redesignated as 1(c) through 1(m), respectively, and the following new note 1(b) is inserted:

"(b) Supporting belts or other support articles of textile material, whose intended effect on the organ to be supported or held derives solely from their elasticity (for example, maternity belts, thoracic support bandages, abdominal support bandages, supports for joints or muscles) (section XI);"

68. The superior text, "Thermometers, not combined with other instruments:", immediately preceding subheading 9025.11, is deleted and the following is inserted in lieu thereof:

"Thermometers and pyrometers, not combined with other instruments:"

69.(a) Subheading 9025.19.00 is superseded by:

	[Hydrometers and similar...:] [Thermometers...:]			
"9025.19	Other:			
9025.19.40	Pyrometers	3.9%	Free (A,C,E,IL,J) 1.9% (CA)	45%
9025.19.80	Other	5%	Free (A,B,C,E, IL,J) 2.5% (CA)	40%"

(b) Subheading 9025.80.30 is renumbered as 9025.80.35 and the article description for renumbered subheading 9025.80.35 is modified by deleting ", psychrometers and pyrometers" and by inserting "and psychrometers" in lieu thereof.

70. The article description for heading 9029 is modified by deleting the expression "of heading 9015;" and by inserting the expression "of heading 9014 or 9015;" in lieu thereof.

71. In note 1 to chapter 92--

(a) subparagraph (d) is modified by inserting the word "or" immediately following the semicolon.

(b) subparagraph (e) is modified by deleting the expression "9706); or" and by inserting the expression "9706)." in lieu thereof.

(c) subparagraph (f) is deleted.

72. The article description for heading 9506 is modified by deleting the expression "for gymnastics," and by inserting the expression "for general physical exercise, gymnastics," in lieu thereof.

73. The article description for subheading 9506.91.00 is deleted and the following is inserted in lieu thereof:

"Articles and equipment for general physical exercise, gymnastics or athletics; parts and accessories thereof"

74. The article description for subheading 9603.21.00 is deleted and the following is inserted in lieu thereof:

"Toothbrushes, including dental-plate brushes"

Annex I (con.)

75. In note 5 to chapter 97--

(a) the expression "are to be treated as forming part of" is deleted and the expression "are to be classified with" is inserted in lieu thereof; and

(b) the following new second sentence is inserted:

"Frames which are not of a kind or of a value normal to the articles referred to in this note are to be classified separately."

Annex II

Effective with respect to goods originating in the territory of Canada that are entered, or withdrawn from warehouse for consumption, on or after the dates set forth in the following tabulation.

For each of the following subheadings created by Annex I of this proclamation, on or after January 1 of each of the following years, the rate of duty in the Rates of Duty 1-Special subcolumn in the HTS that is followed by the symbol "CA" in parentheses is deleted and the following rates of duty inserted in lieu thereof.

HTS Subheading	1994	1995	1996	1997	1998
0404.10.05	4%	3%	2%	1%	Free
0404.10.07	6.4%	4.8%	3.2%	1.6%	Free
0404.10.09	4%	3%	2%	1%	Free
0404.90.45	6.4%	4.8%	3.2%	1.6%	Free
0404.90.65	4%	3%	2%	1%	Free
0902.10.10	4%	3%	2%	1%	Free
0902.20.10	4%	3%	2%	1%	Free
1519.20.20	3.1%	2.3%	1.5%	0.7%	Free
1519.20.40	2%	1.5%	1%	0.5%	Free
1519.20.60	1.4%	1.1%	0.7%	0.3%	Free
2009.19.25	2.1¢/liter	1.5¢/liter	1¢/liter	0.5¢/liter	Free
2009.19.45	3.7¢/liter	2.7¢/liter	1.8¢/liter	0.9¢/liter	Free
2106.90.16	3.7¢/liter	2.7¢/liter	1.8¢/liter	0.9¢/liter	Free
2106.90.65	4%	3%	2%	1%	Free
2202.90.30	2.1¢/liter	1.5¢/liter	1¢/liter	0.5¢/liter	Free
2202.90.35	3.7¢/liter	2.7¢/liter	1.8¢/liter	0.9¢/liter	Free
3924.90.55	1.3%	1%	0.6%	0.3%	Free
3926.90.95	2.1%	1.5%	1%	0.5%	Free
4202.29.10	2.1%	1.5%	1%	0.5%	Free
4202.29.20	2%	1.5%	1%	0.5%	Free
4202.29.50	3.1%	2.3%	1.5%	0.7%	Free
4202.39.10	2.1%	1.5%	1%	0.5%	Free
4202.39.20	2%	1.5%	1%	0.5%	Free
4202.39.50	3.1%	2.3%	1.5%	0.7%	Free
4202.99.10	1.3%	1%	0.6%	0.3%	Free
4202.99.20	2.6%	2%	1.3%	0.6%	Free
4202.99.30	0.8¢/kg + 1.1%	0.6¢/kg + 0.8%	0.4¢/kg + 0.5%	0.2¢/kg + 0.2%	Free
4202.99.50	3.1%	2.3%	1.5%	0.7%	Free

Annex II (con.)

HTS Subheading	1994	1995	1996	1997	1998
4420.90.45	2.6%	2%	1.3%	0.6%	Free
4420.90.65	0.8¢/kg + 1.1%	0.6¢/kg + 0.8%	0.4¢/kg + 0.5%	0.2¢/kg + 0.2%	Free
4421.90.95	3.1%	2.3%	1.5%	0.7%	Free
6115.93.15	2.3%	1.7%	1.1%	0.5%	Free
7326.90.35	3.1%	2.3%	1.5%	0.7%	Free
8528.10.30	1.5%	1.1%	0.7%	0.3%	Free
8528.10.60	2%	1.5%	1%	0.5%	Free
9021.19.85	2.3%	1.7%	1.1%	0.5%	Free
9025.19.40	1.5%	1.1%	0.7%	0.3%	Free
9025.19.80	2%	1.5%	1%	0.5%	Free
9025.80.35	1.5%	1.1%	0.7%	0.3%	Free

Annex III

Effective with respect to articles that are the product of any designated beneficiary country under the CBERA or the ATPA that are entered, or withdrawn from warehouse for consumption, on or after the dates set forth in the following tabulation.

For each of the following subheadings created by Annex I of this proclamation, on or after January 1 of each of the following years, the rate of duty in the Rates of Duty 1-Special subcolumn in the HTS that is followed by the symbol "E,J" in parentheses is deleted and the following rates of duty inserted in lieu thereof.

HTS Provision	1994	1995	1996
4202.29.90	18.5%	18%	17.5%
4202.99.90	18.5%	18%	17.5%

Annex IV

Effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after January 1, 1993:

The following supersedes matter in the HTS.

1. Subheading 2007.99.05 is modified by deleting "7%" from the Rates of Duty 1-General subcolumn and by inserting "3%" in lieu thereof.

2. Subheading 2007.99.20 is modified by deleting "35%" from the Rates of Duty 1-General subcolumn and by inserting "7%" in lieu thereof.

3. Subheading 2007.99.25 is modified by deleting "15.4¢/kg + 10%" from the Rates of Duty 1-General subcolumn and by inserting "7%" in lieu thereof.

4. Subheading 2007.99.35 is modified by deleting "20%" from the Rates of Duty 1-General subcolumn and by inserting "7%" in lieu thereof.

Annex V

Section (a). Effective with respect to articles both: (i) imported on or after January 1, 1976, and (ii) entered, or withdrawn from warehouse for consumption, on or after May 1, 1991:

HTS heading 9902.30.33 is modified by deleting "2921.43.60" and inserting "2921.43.18" in lieu thereof.

Section (b). Effective with respect to articles both: (i) imported on or after January 1, 1976, and (ii) entered, or withdrawn from warehouse for consumption, on or after July 2, 1992:

General note 3(c)(ii)(D) is modified:

(1) by deleting the following HTS subheadings and the country set opposite such subheading:

2933.59.30 India	2933.90.40 India
2933.59.50 India	2933.90.48 India
2933.90.31 India	2933.90.50 India

(2) by adding in numerical sequence, the following HTS subheadings and country set opposite them:

2933.59.59 India	2933.90.85 India
2933.59.90 India	2933.90.90 India
2933.90.55 India	2933.90.95 India

Section (c). Effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after July 22, 1992:

General note 3(c)(ix)(D)(5) to the HTS is modified by deleting the expression "material which the product" and inserting the expression "material which is the product" in lieu thereof.

Section (d). Effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after January 1, 1993:

(1) General note 3(c)(v)(A) to the HTS is modified by deleting from the list of countries "Saint Christopher and Nevis" and inserting "St. Kitts and Nevis", in lieu thereof.

(2) HTS subheading 9902.81.05 is modified by deleting the "Free (CA)" rate from the Rates of Duty 1-Special subcolumn for such subheading.

(3) HTS subheading 9905.00.00 is modified by deleting from the article description for such subheading "6813.10", "6813.90", and "7312.90".

(4) HTS subheading 9905.00.30 is modified by deleting from the article description for such subheading "5801.32".

(5) HTS subheading 9905.29.37 is modified by deleting from the article description for such subheading "2935.00.33 or".

(6) HTS subheading 9905.42.10 is modified by deleting from the article description for such subheading "4202.91.00 or".

(7) HTS subheading 9905.85.05 is modified by deleting from the article description for such subheading the expression "subheadings 8501.33.30, 8501.33.40, 8501.34.30, 8501.51, 8501.53.60 or 8501.53.80" and inserting "subheading 8501.51" in lieu thereof.

Annex V (con.)

Section (d) (con.)

(8) Subchapter V of chapter 99 to the HTS is modified by deleting the following subheadings:

9905.00.10	9905.68.30
9905.25.10	9905.70.05
9905.28.01	9905.76.10
9905.28.02	9905.84.05
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9905.28.04	9905.84.07
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9905.28.15	9905.84.12
9905.29.05	9905.84.13
9905.29.06	9905.84.14
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9905.29.08	9905.84.17
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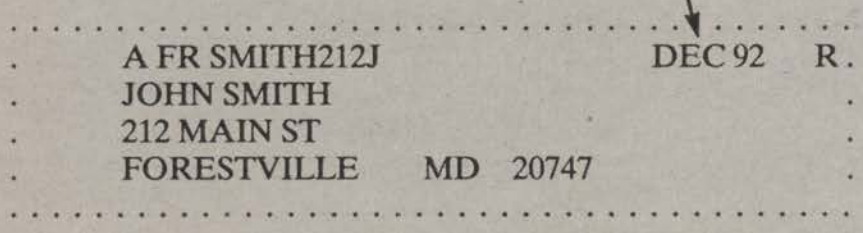

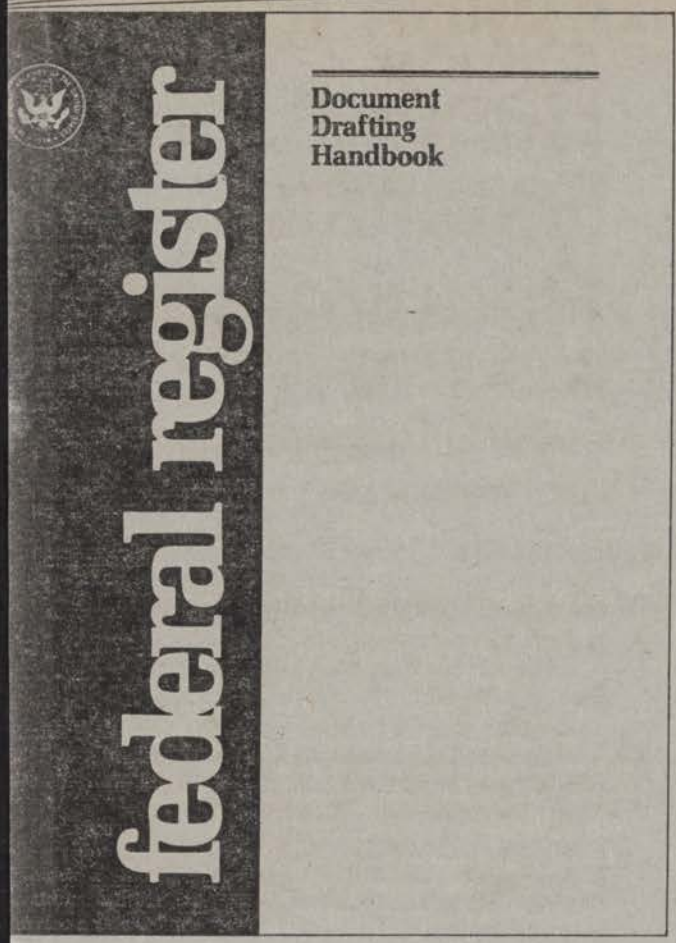

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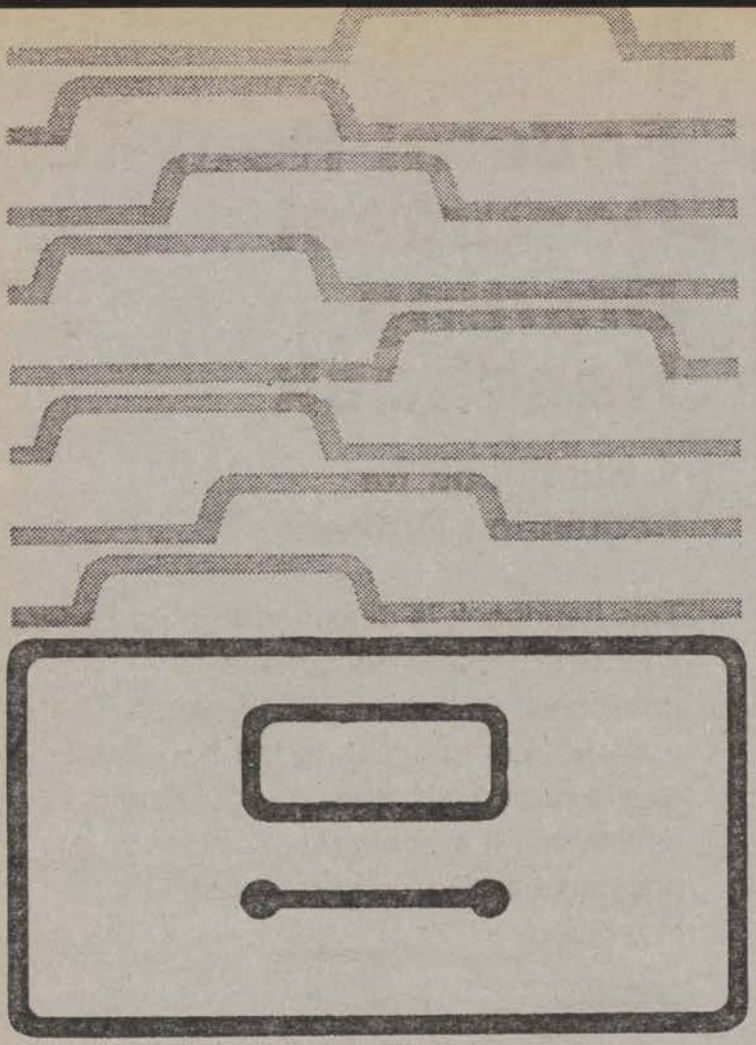

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