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Title 3—

The President

Proclamation 5954 of April 13, 1989

Pan American Day and Pan American Week, 1989

By the President of the United States of America

A Proclamation

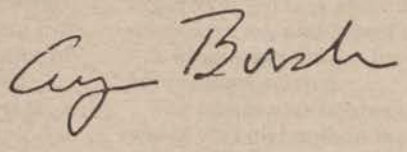
The people of the Americas share a deep love of liberty and dedication to the principles of democracy; the vast majority of nations throughout this hemisphere have freely elected governments. For the past century, these nations have been united in a unique international alliance that is known today as the Organization of American States. Pan American Day and Pan American Week celebrate the ideals we share as members of that alliance, as well as our collective commitment to political and economic freedom.

The peoples of the Americas represent the joining of European, African, Asian, and native American cultures. Centuries ago, these diverse cultures blended and emerged stronger. Our common past, our common values, and a desire for hemispheric unity for the sake of future generations motivated our forefathers to establish the Inter-American system one hundred years ago. Today, the Organization of American States is the proud successor to the Pan American Union, which evolved from the International Union of American Republics formed in 1890. Through the years, the Organization has faithfully served member states and their changing needs.

The United States firmly believes in the value of the Inter-American system and in the vision of freedom and representative democracy to which members are committed by the Charter of the Organization of American States. We support efforts to reevaluate and reinvigorate the system so that it can continue to be a formidable opponent of totalitarianism and drug trafficking and an effective instrument for promoting democracy, human rights, economic development, and peace in the region.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim Friday, April 14, 1989, as Pan American Day and the week of April 9 through April 15, 1989, as Pan American Week. I urge the Governors of the fifty States, the Governor of the Commonwealth of Puerto Rico, and officials of other areas under the flag of the United States of America to honor these observances with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this thirteenth day of April, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and thirteenth.



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Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 58

[DA-89-006]

Grading and Inspection, General Specifications for Approved Plants and Standards for Grades of Dairy Products; Revision of User Fees and Other Administrative Changes

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service is increasing the fees charged for services provided under the dairy inspection and grading program. The program is a voluntary, user-fee program conducted under the authority of the Agricultural Marketing Act of 1946 as amended.

This action increases the hourly rate for all services and eliminates the separate hourly rate for "continuous" nonresident services. The major new fees are $32.00 per hour for resident services and $36.00 per hour for nonresident services.

The purpose of the fee increases is to offset an increase in operating expenses, including a 4.1 percent increase in Federal salaries, a 28.3 percent increase in the Agency's Federal Employees Health Benefits Program contributions, and a 10 percent increase in travel costs (mileage and per diem). The increase will also offset declining revenues resulting from a major reduction in grading activities for Government purchases of surplus dairy products.

EFFECTIVE DATE: April 17, 1989.

FOR FURTHER INFORMATION CONTACT: Lynn G. Boerger, USDA/AMS/Dairy Division, Dairy Grading Section, Room 2750-S, P.O. Box 96456, Washington, DC 20090-6456, (202) 382-9381.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA guidelines implementing Executive Order 12291 and Departmental Regulation 1512-1 and has been classified a "non-major" rule under the criteria contained therein.

The final rule also has been reviewed in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, and the Administrator, Agricultural Marketing Service, has determined that it will not have a significant economic impact on a substantial number of small entities. The changes will not significantly affect the cost per unit for grading and inspection services. The Agricultural Marketing Service (AMS) estimates that overall this rule will yield an additional $400,000 during fiscal year 1989. The Agency does not believe the increases will affect competition. Furthermore, the dairy grading program is a voluntary program.

The Agricultural Marketing Act of 1946, as amended, authorizes the Secretary of Agriculture to provide Federal dairy grading and inspection services that facilitate marketing and help consumers obtain the quality of dairy products they desire. The Act provides that reasonable fees be collected from the users of the services to cover as nearly as practicable the cost of maintaining the program.

Although the hourly fee rates under the program were increased on June 19, 1988, the changes were based on workload levels experienced during FY 1987 and did not take into account the significant and unforeseen drop in workload during the last half of 1988. Also, the changes did not include the recent increase in operating costs caused by the recent 4.1 percent increase in Federal employee salaries, the 28.3 percent increase in the Agency's contribution to the Federal Employee Health Benefits Program, and a travel cost increase of 10 percent. Because of inadequate grading revenues during FY 1988, the operating reserve of over $2 million was depleted. In fact, drastic program adjustments to reduce costs were taken to prevent the program from realizing a negative reserve balance of approximately $600,000 in FY 1988. During FY 1989, further decreases in workload are expected for the nonresident program as a result of a substantial projected reduction in purchases of surplus products under the dairy price support program.

Since the last fee increase, a major restructuring of the grading and inspection program was initiated to bring staffing and operational activities in line with the reduced workload. The adjustments included a 39 percent reduction in staff, closure of one of four regional offices, reductions in travel, deferred computer purchases, and a reduction in management overhead costs.

In spite of these extensive cost-cutting measures, the higher costs for salaries, health benefits and travel and the continuing decline in revenues because of a lower workload are causing the program further financial problems. Without the fee increases, a negative reserve balance of over $400,000 is projected by the end of FY 1989. Revenues and costs for FY 1989 without any fee increases, are projected to be $6 million and $6.4 million, respectively. The fee increases will reverse this situation and will lead to the desired 4-month operating reserve of $2.3 million by the end of FY 1991. With the fee increases, both revenues and costs for FY 1989 are estimated to be $6.4 million.

Program Changes Adopted in the Final Rule

This document makes the following changes in the regulations implementing the dairy inspection and grading program:

1. Increases the hourly fee for resident services from $24.00 to $32.00 and for nonresident services from $33.00 to $36.00.

The resident hourly rate is charged to those who are using grading and inspection services performed by an inspector or grader assigned to a plant on a continuous year-round, resident basis. The nonresident hourly rate is charged to users who request an inspector or grader for particular dates and amounts of time to perform specific grading or inspection activities. These users of nonresident services are charged for the amount of time required to perform the task and undertake related travel, plus travel costs.

2. Eliminates the fee for continuous nonresident service.

The continuous nonresident rate, which was higher than the nonresident rate, applied to users who had contracts with the Agricultural Stabilization and

Conservation Services (ASCS) and who requested service in 40-hour week increments. This rate was intended to include not only the cost for in-plant inspection and grading services but the related travel costs as well. The rate is being discontinued because the Agency cannot accurately establish a rate for all users since the Agency has no control over where the contracts are awarded and thus cannot project under the current workload and staffing level the average travel costs that must be built into the fee rate. Under the change, the user would be charged the nonresident rate plus travel costs. This change will enable the agency to recover the cost of providing service by making charges for travel only when the cost is incurred and charging only those users who require the travel.

3. Increases the fees for laboratory services.

Effective January 15, 1989, the Agency's Commodities Scientific Support Division (CSSD) assumed administrative control of all dairy laboratory services supporting the grading program except those performed in conjunction with the resident services. The resident services laboratory functions will receive oversight and audit of their technical procedures by CSSD. The Dairy Division will continue to bill applicants for laboratory services.

To reflect the additional costs of providing laboratory services that stem from increased salaries and other related employee costs, the hourly rate for laboratory services is increased from $24.00 to $28.00. The charges for specifically listed tests are increased to reflect the change in the hourly rate. Tests that are no longer performed by the laboratory are being deleted from the list of charges.

4. Makes miscellaneous nonsubstantive changes to clarify several of the provisions. These changes include the deletion of the definition of "Continuous nonresident service."

Response to Industry Comments

A rulemaking document proposing the changes discussed above was published in the **Federal Register** on February 14, 1989 (54 FR 6682). A 30-day comment period was provided so that interested persons could submit comments on the proposed changes.

The Agency received four comments. Two were from dairy manufacturing plants, one was from a major industry trade association, and one was from a U.S. Congressman expressing the concerns of his State's Department of Agriculture.

Commenters expressed concern about the size of the proposed fee increases, particularly in view of the relatively recent increase in fees on June 19, 1988. The justification for the fee increases was detailed in the proposed rule and, in addition, was conveyed to industry participants at a January 12, 1989, meeting initiated by the Agency. The total cost of the increases is dependent, of course, upon the number of hours of service provided to the industry. Based on workload projections, the additional cost to the industry is estimated to be approximately $400,000 in FY 1989.

One of the commenters expressed the viewpoint that although inspection and grading activities are provided by AMS as a service to the dairy industry, they also serve the needs of two USDA programs, namely, the price support program and the food distribution programs. The commenter's opinion was that the financial obligations of inspection and grading activities should be borne by all benefiting parties, not just the dairy industry.

Under the Agricultural Marketing Act of 1946 the Secretary of Agriculture is directed and authorized to collect sufficient fees for services rendered to cover as nearly as practicable the costs of such services. In accordance with the regulations issued under the Act, fees and charges for any inspection and grading services are to be paid by the interested party making the application for the service. Although other Government programs may benefit indirectly from these services, there is no requirement that such programs provide financial support to the inspection and grading program. Whether such support would be appropriate is outside the purview of this rulemaking proceeding.

Two of the commenters suggested that an increased level of inspection and grading service be performed through cooperative agreements with individual state agencies. AMS currently has cooperative agreements with 20 states to provide dairy grading and inspection services. Similar cooperative arrangements are available to other states that are interested and have the programs and the personnel necessary to provide the service. However, the costs of providing services through agreements with state agencies must also be covered through fees collected for those services. The fees collected for such services have not always been sufficient to cover the cost of those programs. Currently, cooperative agreements with state agencies are being revised to facilitate greater utilization of these programs and to assure that each program is financially self-supporting.

As a means of reducing grading costs, one commenter suggested that the industry be allowed to collect samples through the use of automated sampling techniques, and that this be coupled with the issuance of a "modified" grading certificate. Automated sampling methods for official samples have been considered numerous times in the past. The challenge of finding a method that provides representative samples still continues, even though many interested parties have participated in discussions on this issue.

The use of modified certificates is inherently limited by the need to accurately reflect the certification involved and to maintain a high level of program integrity. The official certificate must specifically state the status of the product so that the recipient of the certificate can rely on the document to determine product compliance.

One commenter suggested that the fees for laboratory tests be similar to those of commercial laboratories and that a certification/approval of industry laboratories be instituted. The laboratory fee increases set forth herein are intended to cover the increased costs of providing laboratory services that stemmed from increased salaries and other related employee costs. The Agency's Commodities Scientific Support Division (CSSD) will continue to evaluate the cost of providing laboratory tests and will propose fee adjustments as necessary. Also, CSSD and the Dairy Division are currently working with the industry to determine the feasibility of the certification/approval of industry laboratories.

One commenter suggested that consideration be given to discontinuing the ASCS requirement that continuous inspection be required during the manufacture of process cheese intended for sale to the Commodity Credit Corporation. Several years ago the continuous inspection requirement was recommended to ASCS by AMS as a way to improve product quality and reduce consumer complaints. Prior to that recommendation, in-plant investigations by AMS found numerous situations where manufacturers were using a natural cheese of lesser quality than that required by the ASCS announcement. We believe that continuous inspection is primarily responsible for a more consistent quality product and a significant decrease in consumer complaints.

One commenter suggested a further consolidation of USDA inspection and grading activities, including joint

program efforts between dairy and other commodity divisions in AMS (meat, poultry and fruit and vegetable). This method of reducing the overall cost of AMS user fee programs has been used for several years. The cross-utilization of graders between the various commodity divisions can maximize the utilization of manpower and provide flexibility within each program to adjust to changing workloads. This option has been used extensively by the dairy grading and inspection program during the past eight months. This method of providing service will continue and when possible be expanded to reduce program costs through cross-utilization of manpower.

Information Collection Requirements and Recordkeeping

Information collection requirements and the recordkeeping provision contained in 7 CFR Part 58, Subpart A, have been approved previously by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB No. 0581–0126.

Pursuant to 5 U.S.C. 553, it is hereby found that good cause exists for not delaying the effective date of this action until 30 days after publication of this final rule in the **Federal Register**. The seriousness of the revenue shortfall warrants putting the higher rates into effect as quickly as possible. An immediate increase in fees is essential for effective management and operation of the program, and to satisfy the requirements of the Agricultural Marketing Act of 1946. The necessity to implement the changes as soon as possible after publication of a final rule was discussed in the proposal and during a USDA-initiated meeting with industry representatives in January 1989.

The provisions of this final rule are known to interested parties. A proposed rule setting forth the fee increases and other administrative changes adopted herein was published in the **Federal Register** on February 14, 1989. The changes effected by this final rule will not require extensive preparation or substantial changes in operation by those persons using the program's services.

List of Subjects in 7 CFR Part 58

Food grades and standards, Dairy products.

For the reasons set forth in the preamble, 7 CFR Part 58 is amended by amending Subpart A as follows:

Subpart A—Regulations Governing the Inspection and Grading Services of Manufactured or Processed Dairy Products

PART 58—[AMENDED]

1. The authority citation for Part 58 continues to read as follows:

Authority: Sections. 202–208, 60 Stat. 1087, as amended; 7 U.S.C. 1621–1627, unless otherwise noted.

§ 58.1 [Amended]

2. Section 58.1 is amended to remove the definition of the term "Continuous nonresident service."

3. Section 58.41 is revised to read as follows:

§ 58.41 Fees for additional copies of certificates.

Additional copies of any inspection or grading certificates (including takeoff certificates), other than those provided for in § 58.20 may be supplied to any interested party upon payment of a fee based on time required to prepare such copies at the hourly rate specified in § 58.43.

4. Section 58.43 is revised to read as follows:

§ 58.43 Fees for inspection, grading, and sampling.

Except as otherwise provided in this section and §§ 58.38 through 58.46, charges shall be made for inspection, grading, and sampling service at the hourly rate of $36.00 for service performed between 6 a.m. and 6 p.m., and $39.60 for service performed between 6 p.m. and 6 a.m., for the time required to perform the service calculated to the nearest 15-minute period, including the time required for preparation of certificates and reports and the travel time of the inspector or grader in connection with the performance of the service. A minimum charge of one-half hour shall be made for service pursuant to each request or certificate issued.

5. Section 58.44 is revised to read as follows:

§ 58.44 Fees for laboratory analysis.

Except as otherwise provided in this section, charges shall be made for laboratory analysis at the hourly rate of $28.00 for the time required to perform the service. A minimum charge of one-half hour shall be made for service pursuant to each request or certificate issued. The following minimum rates per test, which are based on the average time required to perform the test is greater than the minimum set forth:

(a) Dry milk and related products

Total fat (ether extraction)	$5.07
Moisture	3.91
Titratable acidity	1.92
Solubility index	2.63
Scorched particles	2.63
Bacterial plate count	5.07
Bacterial direct microscopic count	7.58
Whey protein nitrogen	12.77
Vitamin A	25.32
Alkalinity of ash	28.00
Dispersibility	12.77
Coliform (solid media)	5.07
Salmonella	28.00
Phosphatase	28.00
Oxygen	15.17
Density	1.92
Antibiotic	9.39

(b) Condensed milk and related products

Fat (fat extraction)	$7.58
Total solids	5.07
Sugar (sucrose)	28.00
Net weight (per can)	3.09

(c) Cheese and related products

Moisture	$5.07
Moisture in duplicate	7.58
Total fat (ether extraction)	8.93
Moisture and fat (dry basis) complete	14.00
Meltability (Process cheese)	5.07

(d) Butter and related products

Moisture	$5.07
Fat	10.09
Salt	5.07
Complete Kohman analysis	15.17
Fat and moisture (same sample)	12.77
Peroxide value	28.00
Free fatty acid	12.77
Yeast and mold	6.42
Proteolytic count	6.42

(e) Meat and related products

Fat (hamburger)	$13.13

6. Section 58.45 is revised to read as follows:

§ 58.45 Fees for continuous resident service.

Irrespective of the fees and charges provided in §§ 58.39 and 58.43, charges for the inspector(s) and grader(s) assigned to a continuous resident program shall be made at the rate of $32.00 per hour for services performed during the assigned tour of duty. Charges for service performed in excess of the assigned tour of duty shall be made at a rate of 1½ times the rate stated in this section.

§ 58.47 [Removed]

7. Section 58.47 is removed.

Signed at Washington, DC on April 13, 1989.

J. Patrick Boyle,

Administrator, Agricultural Marketing Service.

[FR Doc. 89-9249 Filed 4-14-89; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Parts 911 and 915

[Docket No. FV-89-021]

Expenses and Assessment Rates for the Marketing Orders Covering Limes and Avocadoes Grown in Florida

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures and establishes assessment rates under Marketing Orders 911 and 915 for the 1989–90 fiscal year for each marketing order program. These expenditures and assessment rates are needed by the administrative committees established under these orders to pay program expenses and collect assessments from handlers to pay those expenses. This action is intended to enable these committees to perform their duties and the programs to operate.

EFFECTIVE DATES: April 1, 1989, through March 31, 1990, for each order.

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456; telephone: (202) 475–3918.

SUPPLEMENTARY INFORMATION: This final rule is issued under the Marketing Agreements and Marketing Order Nos. 911 (7 CFR Part 911) regulating the handling of limes grown in Florida, and 915 (7 CFR Part 915) regulating the handling of avocadoes grown in South Florida. These agreements and orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

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

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

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

There are about 26 handlers of Florida limes and 34 handlers of Florida avocadoes subject to regulation under these marketing orders, and about 260 lime producers and 300 avocado producers in Florida. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of these handlers and producers may be classified as small entities.

Marketing orders administered by the U.S. Department of Agriculture (Department) require that the assessment rate for a particular fiscal year shall apply to all assessable commodities handled from the beginning of such year. An annual budget of expenses is prepared by each administrative committee and submitted to the Department for approval. The members of administrative committees are handlers and producers of the regulated commodities. They are familiar with the committees' needs and with the costs for goods, services, and personnel in their local areas and are thus in a position to formulate appropriate budgets. The budgets are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by each administrative committee is derived by dividing anticipated expenses by the expected shipments of the commodity (e.g., pounds, tons, boxes, cartons, bushels, etc.). Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committees' expected expenses. Recommended budgets and rates of assessment are usually acted upon by the committees shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approvals must be expedited so that the committees will have funds to pay their expenses.

The Florida Lime Administrative Committee (FLAC) met January 11, 1989, and unanimously recommended a 1989–90 budget with expenditures of $233,000 and an assessment rate of $0.15 per bushel (55 pounds) of assessable limes shipped under M.O. 911. In comparison, 1988–89 fiscal year budgeted expenditures were $233,500 and the assessment rate was $0.15 per bushel. Major expenditure items budgeted for the 1989–90 fiscal year, compared with those budgeted in 1988–89 (in parentheses), are $105,300 ($107,900) for program administration, $102,700 ($100,600) for production research, and $25,000 ($25,000) for market development and public relations. To cover 1989–90 expenses, assessment income is estimated at $225,000 based on shipments of 1,500,000 bushels of assessable limes, and interest income at $8,000. The FLAC also unanimously recommended that excess 1988–89 assessments estimated at $15,000 be placed in its reserve, creating a reserve of about $151,000, an amount well within the maximum authorized.

The Avocado Administrative Committee (AAC) met January 11, 1989, and unanimously recommended a 1989–90 budget with expenditures of $200,000 and an assessment rate of $0.16 per bushel (55 pounds) of assessable avocados shipped under M.O. 915. In comparison, 1988–89 fiscal year budgeted expenditures were $193,500 and the assessment rate was $0.11 per bushel. Major expenditure items budgeted for the 1989–90 fiscal year, compared with those budgeted in 1988–89 (in parentheses), are $113,800 ($107,300) for program administration, $61,200 ($61,200) for production research, and $25,000 ($25,000) for market development and public relations. To cover 1989–90 expenses, assessment income is estimated at $195,200 based on shipments of 1,220,000 bushels of assessable avocados, and interest income at $4,800. The AAC expects to have about $59,000 in its reserve at the beginning of the 1989–90 fiscal year, an amount well within the maximum authorized.

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

This action adds new §§ 911.228 and 915.228 and is based on the committees' recommendations and other information. A proposed rule concerning this action was published in the **Federal Register** (54 FR 7935, February 24, 1989). Comments on the proposed rule were invited from interested persons until March 27, 1989. No comments were received.

After consideration of the information and recommendations submitted by the committees and other available information, it is found that this final rule will tend to effectuate the declared policy of the Act.

This final rule should be expedited because the committees need to have sufficient funds to pay their expenses, which are incurred on a continuous basis. In addition, handlers are aware of the action, which was recommended by the committees at public meetings. Therefore, it is found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553).

List of Subjects in 7 CFR Parts 911 and 915

Marketing agreements and orders, limes, avocados, Florida.

For the reasons set forth in the preamble, 7 CFR Parts 911 and 915 are amended as follows:

Note: These sections will not appear in the Code of Federal Regulations.

1. The authority citation for 7 CFR Parts 911 and 915 continues to read as follows:

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

2. New §§ 911.228 and 915.228 are added to read as follows:

PART 911—LIMES GROWN IN FLORIDA

§ 911.228 Expenses and assessment rate.

Expenses of $233,000 by the Florida Lime Administrative Committee are authorized, and an assessment rate of $0.15 per bushel (55 pounds) of assessable limes is established for the fiscal year ending March 31, 1990. Any unexpended funds from the 1988–89 fiscal year shall be carried over as a reserve.

PART 915—AVOCADOS GROWN IN SOUTH FLORIDA

§ 915.228 Expenses and assessment rate.

Expenses of $200,000 by the Avocado Administrative Committee are authorized, and an assessment rate of $0.16 per bushel (55 pounds) of assessable avocados is established for the fiscal year ending March 31, 1990. Any unexpended funds from the 1988–89 fiscal year shall be carried over as a reserve.

Dated: April 12, 1989.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–9129 Filed 4–14–89; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 925

[Docket No. FV–89–028]

Expenses and Assessment Rate for Marketing Order No. 925

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures and establishes an assessment rate under Marketing Order 925 for the 1989 fiscal period. Authorization of this budget will allow the California Desert Grape Administrative Committee to incur expenses reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATE: January 1, 1989 through December 31, 1989.

FOR FURTHER INFORMATION CONTACT: Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone 202–447–5331.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 925 and Marketing Order No. 925 (7 CFR Part 925) regulating the handling of grapes grown in a designated area of southeastern California. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

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

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

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

There are approximately 20 handlers of California desert grapes under this marketing order, and approximately 90 desert grape producers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of the handlers and producers may be classified as small entities.

The marketing order requires that the assessment rate for a particular fiscal period shall apply to all assessable grapes handled from the beginning of such period. An annual budget of expenses is prepared by the committee and submitted to the Department of Agriculture for approval. The members of the committee are handlers and producers of grapes. They are familiar with the committee's needs and with the costs for goods, services, and personnel in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the committee is derived by dividing anticipated expenses by expected shipments of grapes. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses. A recommended budget and rate of assessment is usually acted upon by the committee before the season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approval must be expedited so that the committee will have funds to pay its expenses.

The California Desert Grape Administrative Committee met on February 9, 1989, and unanimously recommended a 1989 budget of $48,000. This year's budget is $3,000 more than last year's, due to added expenditures for committee expenses and salary increases for the committee staff. Other increases include payroll taxes, printing, postage, and office expenses. The committee also recommended an assessment rate of $0.004 per lug. This rate, when applied to anticipated shipments of 8,000,000 lugs would yield

$32,000 in assessment revenue which, when added to $16,000 from interest income and reserve funds, will be adequate to cover budgeted expenses.

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

A proposed rule was published in the Federal Register (54 FR 11004, March 16, 1989). That document contained a proposal to add § 925.208 to establish expenses and an assessment rate for the California Desert Grape Administrative Committee. That rule provided that interested persons could file comments through March 27, 1989. No comments were received.

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

This action should be expedited because the committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. In addition, handlers are aware of this action which was recommended by the committee at a public meeting. Therefore, the Secretary also finds that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register (5 U.S.C. 553).

List of Subjects in 7 CFR Part 925

Marketing agreements and orders, grapes (California).

For the reasons set forth in the preamble, 7 CFR Part 925 is amended as follows:

PART 925—GRAPES GROWN IN A DESIGNATED AREA OF SOUTHEASTERN CALIFORNIA

1. The authority citation for 7 CFR Part 925 continues to read as follows:

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

2. Section 925.208 is added to read as follows:

Note: This section prescribes the annual expenses and assessment rate and will not be published in the Code of Federal Regulations

§ 925.208 Expenses and assessment rate.

Expenses of $48,000 by the California Desert Grape Administrative Committee are authorized, and an assessment rate of $0.004 per 22-pound container of grapes is established for the fiscal period ending December 31, 1989. Unexpected funds may be carried over as a reserve.

Dated: April 11, 1989.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–9116 Filed 4–14–89; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 1065

[DA–89–013]

Milk in the Nebraska-Western Iowa Marketing Area; Temporary Revision of Diversion Limitation Percentage

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Temporary revision of rules.

SUMMARY: This action temporarily relaxes for the months of April through August 1989 the limits on the amount of milk not needed for fluid (bottling) use that may be moved directly from farms to nonpool manufacturing plants and still be priced under the Nebraska-Western Iowa milk order. The limits would be revised temporarily from 50 percent to 70 percent. The revision is made in response to a request by a cooperative association representing producers supplying the market, and will prevent uneconomic movements of milk.

EFFECTIVE DATE: April 17, 1989.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 447–7183.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Temporary Revision of Diversion Limitation Percentages: Issued March 16, 1989; published March 21, 1989 (54 FR 11546).

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. Such action will provide greater assurance that handlers will not engage in uneconomic movement of the market's reserve milk supplies in qualifying such milk for pricing status under the order. The action will also tend to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

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

This temporary revision is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the provisions of § 1065.13(d)(4) of the Nebraska-Western Iowa order.

Notice of proposed rulemaking was published in the Federal Register (54 FR 11546) concerning a proposed relaxation of the limits on the amount of milk not needed for fluid (bottling) use that may be moved directly from farms to nonpool manufacturing plants and still be priced under the order. The temporary revision was proposed to be effective for the months of April through August 1989. The public was afforded the opportunity to comment on the notice by submitting written data, views and arguments by March 28, 1989.

Statement of Consideration

After consideration of all relevant material, data, views and arguments filed and other available information, it is hereby found and determined that the diversion limits on producer milk should be increased by 20 percentage points, from 50 percent to 70 percent.

Pursuant to the provisions of § 1065.13(d), the Director of the Dairy Division may increase or decrease the diversion limitation percentages by up to 20 percentage points in any month. Such changes may be made to encourage additional milk shipments needed to assure an adequate supply of milk to fluid handlers, or to prevent uneconomic shipments of milk merely for the purpose of assuring that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

With the exception of three months in 1987, the order's diversion limits have been revised temporarily since May 1986. Most recently the order's diversion limitation percentages were revised from 50 to 65 percent for the months of April through August 1988, and from 40 to 60 percent for the months of September 1988 through March 1989.

National Farmers Organization (NFO), a cooperative association which represents producers supplying the Nebraska-Western Iowa market, requested that for the months of April through August 1989, the diversion limit on producer milk be increased by 20 percentage points.

The cooperative stated that the percentage of producer milk used in Class II and Class III under the Nebraska-Western Iowa order was approximately 70 percent during the months of April through August 1988, and it expects that percentage to be approximately the same for the same months of 1989. NFO stated that keeping the order's diversion allowance at a level approximately equal to the marketwide Class II and Class III usage is quite appropriate.

According to NFO, milk produced that is surplus to the fluid needs of the market must be diverted to manufacturing facilities. In order to comply with the order's 50-percent diversion limits, the cooperative stated that the required percentage of its members' milk must be delivered to pool plants. However, a significant amount of its members' milk is not needed at pool plants. In order to qualify for pooling, some of the cooperative's members' milk must be unloaded at a pool plant, then reloaded and shipped to a nonpool plant to be used. NFO stated that without the temporary revision such uneconomic milk shipments will be necessary for the months of April through August 1989 if the milk of its member producers customarily pooled under the Nebraska-Western Iowa order is to continue to be priced under the order and receive the benefits of such pricing. According to NFO, the temporary increase of the diversion limits is necessary to prevent uneconomic shipments merely for the purpose of assuring that dairy farmers historically associated with the market will continue to have their milk priced under the order.

Comments supporting the temporary revision of the diversion limitations were received from Associated Milk Producers, Inc. (AMPI), a cooperative association also representing producers on the Nebraska-Western Iowa market. AMPI supported the temporary revision of the order's diversion limits, stating that the volume of producer milk pooled under the order was higher for the months of January and February 1989 than for the same months of 1988 and that Class I use was lower.

The cooperative emphasized that an increase of diversion limits, to allow more milk not needed for Class I use to be shipped directly to manufacturing plants, is the most economical solution to the problem of decreased Class I utilization and increased supplies of producer milk.

No comments opposing the proposed relaxation of the Nebraska-Western Iowa order's diversion limits were received.

Without the temporary revision, milk would have to be moved unnecessarily and uneconomically from farms to pool plants for the sole purpose of maintaining the pool status of producers historically pooled under the Nebraska-Western Iowa order. In addition to such movements of milk being inefficient and uneconomic, the additonal pumping to which the milk would be subject would be detrimental to the quality of the milk. It is concluded the relaxation of the producer milk diversion limit by 20 percentage points will prevent uneconomic movements of milk to pool plants merely for the purpose of qualifying it as producer milk under the order.

It is hereby found and determined that 30 days' notice of the effective date hereof is impractical, unnecessary, and contrary to the public interest in that:

(a) This temporary revision is necessary to reflect current marketing conditions and to maintain orderly marketing conditions in the marketing area for the months of April through August 1989;

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

(c) Notice of the proposed temporary revision was given interested parties and they were afforded opportunity to file written data, views, or arguments concerning this temporary revision.

Therefore, good cause exists for making this temporary revision effective upon publication of this notice in the **Federal Register.**

List of Subjects in 7 CFR Part 1065

Milk marketing order, Milk, Dairy products.

It is therefore ordered, That the aforesaid provisions of § 1065.13(d) (2) and (3) of the Nebraska-Western Iowa milk order are hereby revised for the months of April through August 1989.

PART 1065—MILK IN THE NEBRASKA-WESTERN IOWA MARKETING AREA

1. The authority citation for 7 CFR Part 1065 continues to read as follows:

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

§ 1065.13 [Amended]

2. In § 1065.13(d) (2) and (3), the provision "50 percent" is revised to "70 percent" for the months of April through August 1989.

Signed at Washington, DC, on April 12, 1989.

W.H. Blanchard,

Director, Dairy Division.

[FR Doc. 89–9130 Filed 4–14–89; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 4

[T.D. 89–45]

Adding People's Republic of China to the List of Nations Entitled to Special Tonnage Tax Exemption

AGENCY: Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This rule amends the Customs Regulations by adding the People's Republic of China to the list of nations whose vessels are exempt from the payment of any higher tonnage duties than are applicable to vessels of the United States and from the payment of light money. The Department of State informed Customs that there is satisfactory evidence that no discriminatory duties of tonnage or impost are being imposed in ports of the People's Republic of China upon vessels belonging to citizens of the United States or on their cargoes. This amendment provides reciprocal privileges for vessels registered in the People's Republic of China.

EFFECTIVE DATE: December 15, 1988.

FOR FURTHER INFORMATION CONTACT: Kathleen M. Falcon, Carrier Rulings Branch, (202–566–5706).

SUPPLEMENTARY INFORMATION:

Background

Generally, the United States imposes regular and special tonnage taxes, and a duty of a specified amount per ton, called "light money", on all foreign vessels which enter United States ports (46 U.S.C. App. 121, 128). However, vessels of a foreign nation may be exempted from the payment of special tonnage taxes and light money upon presentation of proof satisfactory to the President that no discriminatory duties of tonnage or impost are imposed by that foreign nation on U.S. vessels or their cargoes (46 U.S.C. App. 121, 141). Section 4.22, Customs Regulations (19 CFR 4.22), lists those nations whose vessels have been exempted from the

payment of any higher tonnage duties than are applicable to vessels of the U.S. and from the payment of light money.

By letter dated September 19, 1980, the Department of State advised the Department of Treasury that satisfactory evidence existed, in the form of the U.S.-China Agreement on Maritime Transport and the U.S.-China Agreement on Trade Relations, that no discriminating duties of tonnage or impost are imposed or levied in ports of the People's Republic of China upon vessels wholly belonging to citizens of the United States, or upon the produce, manufactures, or merchandise imported into the People's Republic of China on vessels of the United States. Accordingly, T.D. 82–16, published in the **Federal Register** on January 14, 1982, (47 FR 2084) amended § 4.22, Customs Regulations, by granting reciprocal privileges to vessels of China as of September 17, 1980.

Subsequently, by letter dated December 19, 1983, the Department of State informed the Customs Service that the U.S.-China Agreement on Maritime Transport, which was signed and became effective on September 17, 1980, had expired on December 16, 1983. Since no successor agreement was concluded and the only assurances the Government of China had provided the U.S. Government concerning tonnage duties were contained in the Maritime Agreement, which expired on December 16, 1983, the Department of State recommended that China be removed, effective December 16, 1983, from the list of nations whose vessels are exempt from the payment of special tonnage tax and light money. Accordingly, T.D. 84–57, published in the **Federal Register** on March 8, 1984, amended § 4.22, Customs Regulations, by deleting the People's Republic of China from the list of nations in § 4.22, effective December 16, 1983.

By a communication dated December 20, 1988, together with an accompanying copy of a new U.S.-China Agreement on Maritime Transport that became effective on December 15, 1988, and due to expire four years hence, the Department of State informed the Customs Service that no discriminating duties of tonnage or impost are imposed or levied in ports of the People's Republic of China upon vessels wholly belonging to citizens of the United States, or upon the produce, manufactures, or merchandise imported into the People's Republic of China on vessels of the United States. Consequently, the Department of State recommended the addition of the People's Republic of China, effective December 15, 1988, to the list of nations whose vessels are exempted from the payment of tonnage tax and light money.

The authority to amend this section of the Customs Regulations has been delegated to the Chief, Regulations and Disclosure Law Branch.

Finding

On the basis of the information received from the Department of State regarding the absence of discriminatory duties of tonnage or impost imposed on U.S. vessels in the ports of the People's Republic of China, it has been determined that the People's Republic of China should be added to the list of nations whose vessels are exempt from the payment of the special tonnage tax and light money.

Inapplicability of Public Notice and Delayed Effective Date Requirements

Because this amendment merely implements a statutory requirement and involves a matter in which the public is not particularly interested, pursuant to 5 U.S.C. 553(b)(B), notice and public procedure thereon are unnecessary. Further, for the same reasons, good cause exists for dispensing with a delayed effective date under 5 U.S.C. 553(d)(1).

Inapplicability of the Regulatory Flexibility Act

This document is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). That Act does not apply to any regulation such as this for which a notice of proposed rulemaking is not required by the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) or any other statute.

Executive Order 12291

This amendment does not meet the criteria for a major regulation as defined in E.O. 12291. Accordingly, a regulatory impact analysis is not required.

Drafting Information

The principal author of this document was Earl Martin, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other offices of the Customs Service participated in its development.

List of Subjects in 19 CFR Part 4

Customs duties and inspection, Cargo vessels, Maritime carriers, Vessels.

Amendment to the Regulations

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

1. The general authority for Part 4 and the specific authority for § 4.22 continue to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1624, and 46 U.S.C. App. 3 Section 4.22 also issued under 46 U.S.C. App. 121, 128, 141.

§ 4.22 [Amended]

2. Section 4.22 is amended by inserting "People's Republic of China" in appropriate alphabetical order, in the list of nations whose vessels are exempted from the payment of any higher tonnage duties than are applicable to vessels of the United States and from the payment of light money.

Dated: April 11, 1989.

Kathryn C. Peterson,

Chief, Regulations and Disclosure Law Branch.

[FR Doc. 89–9032 Filed 4–14–89; 8:45 am]

BILLING CODE 4820–02–M

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting and Supervising Federal Prisoners; Reference to Disciplinary Hearing Officers

AGENCY: Parole Commission, Justice.

ACTION: Final rule.

SUMMARY: The Parole Commission is revising the language used in 28 CFR 2.34 to reflect changes made by the Bureau of Prisons with regard to institution disciplinary committee hearings. The change substitutes the term "disciplinary hearing officer" for "institutional disciplinary committee" where these words appear in paragraphs (a) and (c). The reference in paragraph (a) makes an institutional discipline committee finding a basis for retarding parole or scheduling a recission hearing. Subparagraph (c) makes an institutional disciplinary committee finding "conclusive evidence" of the misconduct. A disciplinary hearing officer serves the same purpose as the former institutional disciplinary committee, and the change in the language merely reflects a change in the terms employed by the Bureau of Prisons.

EFFECTIVE DATE: May 17, 1989.

FOR FURTHER INFORMATION CONTACT: Richard K. Preston, Office of the General Counsel, U.S. Parole Commission, 5550 Friendship Boulevard, Chevy Chase, Maryland 20815. Telephone: (301) 492–5959.

SUPPLEMENTARY INFORMATION: (see summary above)

This rule change will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Prisoners, Probation and Parole.

PART 2—[AMENDED]

1. The authority citation for 28 CFR Part 2 continues to read:

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

2. Section 2.34 is amended by revising paragraphs (a) and (c) to read as follows:

§ 2.34 Rescission of parole.

(a) When an effective date of parole has been set by the Commission, release on that date is conditioned upon continued satisfactory conduct by the prisoner. If a prisoner granted such a date has been found in violation of institution rules by a disciplinary hearing officer or is alleged to have committed a new criminal act at any time prior to the delivery of the certificate of parole, the Regional Commissioner shall be advised promptly of such information. The prisoner shall not be released until the institution has been notified that no change has been made in the Commission's order to parole. Following receipt of such information, the Regional Commissioner may reopen the case and retard the parole date for up to 90 days without a hearing, or schedule a rescission hearing under this section on the next available docket at the institution or on the first docket following return to a federal institution from a Community Treatment Center or a state or local halfway house.

(b) * * *

(c) A hearing before a disciplinary hearing officer resulting in a finding that the prisoner has committed a violation of disciplinary rules may be relied upon by the Commission as conclusive evidence of institutional misconduct. However, the prisoner will be afforded an opportunity to explain any mitigating circumstances, and to present documentary evidence in mitigation of the misconduct at the rescission hearing.

* * * * *

Date: April 5, 1989.

Benjamin F. Baer,

Chairman, U.S. Parole Commission.

[FR Doc. 89–9157 Filed 4–14–89; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

Ohio Regulatory Program; Correction

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

ACTION: Final rule; correction.

SUMMARY: This document corrects the final rule notice published on January 30, 1989 (54 FR 4276) concerning an amendment to the Ohio regulatory program approved under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment (Program Amendment Number 33) revised Ohio's regulations concerning coal exploration. This document corrects an inadvertent typographical error which occurred in the preparation of the final rule notice.

FOR FURTHER INFORMATION CONTACT: Ms. Nina Rose Hatfield, Director, Columbus Field Office, Office of Surface Mining Reclamation and Enforcement, Room 202, 2242 South Hamilton Road, Columbus, Ohio 43232; Telephone: (614) 866-0578.

SUPPLEMENTARY INFORMATION: The first sentence of Finding 2. (concerning OAC 1501:13–4–02(B)(1)(c)) in the Director's Findings section, on page 4277, should be corrected as follows. The word "area" in line two should be corrected to read "site." In line three, the word "site" should be corrected to read "area." The corrected sentence should read as follows:

To improve consistency in terminology, Ohio is replacing "site" with "area" when referencing the location of exploration activities.

Date: April 7, 1989.

Jeffrey D. Jarrett,

Acting Assistant Director, Eastern Field Operations

[FR Doc. 89–9096 Filed 4–14–89; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 392

[DoD Directive 5134.4]

Director of Small and Disadvantaged Business Utilization; Correction

AGENCY: Department of Defense.

ACTION: Correction.

SUMMARY: This corrects an administrative error printed on April 3, 1989 (54 FR 13381). The DoD Directive number previously read "5134.3." This corrects the number to "5134.4." All other information is correct.

EFFECTIVE DATE: March 17, 1989.

FOR FURTHER INFORMATION CONTACT: Ms. Linda M. Bynum, Correspondence and Directives Directorate, Washington, DC 20301–1155, telephone 202–697–4111.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

April 11, 1989.

[FR Doc. 89–9040 Filed 4–14–89; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 161

RIN 2115–AA39

[CGD–79–131]

U.S./Canadian Cooperative Vessel Traffic Management System

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This rulemaking establishes the Cooperative Vessel Traffic Management System (CVTMS) in Haro Strait and the Strait of Juan de Fuca northwest of the State of Washington and southeast of Vancouver Island. In 1979, the United States and Canada signed an agreement to establish a jointly managed CVTMS in this region. These regulations implement that agreement, and provide for the safe and expeditious movement of vessel traffic while minimizing the risk of pollution and marine casualties.

EFFECTIVE DATE: April 24, 1989.

FOR FURTHER INFORMATION CONTACT: LT J.M. SOLLOSI, Office of Navigation Safety and Waterway Services, Vessel Traffic Services Branch, (202) 267–0407. Normal office hours are 7:00 a.m. to 3:30 p.m., Monday through Friday.

SUPPLEMENTARY INFORMATION: A Notice of Proposed Rulemaking (NPRM) for this regulation was published on Thursday, August 18, 1983 in the **Federal Register**, (48 FR 37433). The comment period closed on October 3, 1983. One comment was received. As a result of this comment, administrative corrections to the NPRM were subsequently published in the **Federal Register** on Tuesday, August 30, 1983, (48 FR 39244). In addition, the NPRM was reviewed by the Joint Coordinating Group, a committee consisting of members of the U.S. and Canadian Coast Guards that was formed to develop the U.S. and Canadian regulations and to ensure that they were compatible.

Drafting information: The principal persons involved in drafting this Final Rule were LTJG Kenneth J. BRADLEY, Project Manager; and Christena GREEN, Project Counsel, Office of the Chief Counsel.

Background: The Ports and Waterways Safety Act, (33 U.S.C. 1221) provides authority for the Coast Guard to "establish, operate, and maintain vessel traffic services * * * in any area covered by an international agreement." In order to reduce the risk of vessel collisions and pollution, the United States and Canada jointly implemented a voluntary Traffic Separation Scheme (TSS) for the Strait of Juan de Fuca. The TSS was established in 1975 in accordance with guidelines and procedures of the International Maritime Organization (IMO), and was adopted by that organization on January 1, 1982. The joint Canadian/United States "Agreement for a Cooperative Vessel Traffic Management System for the Juan de Fuca Region" was signed by representatives of both nations on December 19, 1979. The purpose of the agreement between the United States and Canada is to establish a permanent vessel traffic service in the Juan de Fuca region between the United States and British Columbia, Canada. The objectives of the agreement are to enhance safe and expeditious vessel traffic movement, and to minimize risk of pollution to the marine environment. The United States and Canada determined that the terms of this agreement would best be carried out through the issuance and enforcement of compatible regulations by each party. The Joint Coordinating Group was formed to develop compatible U.S. and Canadian regulations. Amendments to the Canada Shipping Act, authorizing the Canadian regulations, will become effective April 24, 1989, and the implementing Canadian rules will be effective as of that date. It is essential to the implementation of the joint vessel traffic service that these rules and the Canadian rules have the same effective date. Therefore, under the provisions of 5 U.S.C. 553(d), good cause exists for making these rules effective in less than 30 days.

Discussion of Final Rule

The waters to which this rulemaking apply are referred to as the Cooperative Vessel Traffic Management System Area (CVTMS Area). The CVTMS Area is separated into three divisions, referred to as zones. The Tofino and Vancouver zones are managed by the Canadian Coast Guard, while the United States Coast Guard manages the Seattle zone. The zone boundaries are described in §§ 161.256, 161.258 and 161.260. In the Tofino and Vancouver Zones, Canadian Regulations and the regulations in this final rule require vessels in Canadian waters and U.S. waters, respectively, to report to and comply with the directions of the appropriate Canadian Vessel Traffic Management Center. In the Seattle Zone, Canadian Regulations and the regulations in this final rule require vessels in Canadian waters and U.S. waters, respectively, to report to, and comply with, directions of the United States Vessel Traffic Management Center. Each set of regulations applies only to the waters over which the issuing nation has jurisdiction, and each nation will enforce only its own set of regulations.

Vessels which are located in each zone will be monitored by radar at the respective Vessel Traffic Management Center. Radar observations of vessels will be augmented by radiotelephone reports which are made by each vessel to the Center at specified times.

This Final Rule requires the carriage of a radiotelephone by certain vessels which would not otherwise be required to carry one. Currently, the Vessel Bridge-to-Bridge Radiotelephone Act requires the use of radiotelephones on power-driven vessels of 300 gross tons and upward, on vessels of 100 gross tons and upward carrying one or more passengers for hire, on towing vessels of 26 feet and over, and on certain dredges and floating plants. This Final Rule also requires certain vessels engaged in towing and most vessels of 30 meters or more to carry a radiotelephone. The impact of this requirement will be to require the carriage of a radiotelephone by the following vessels which presently are not required to carry one:

a. Power-driven vessels of 30 meters or more but less than 300 gross tons, except fishing vessels;

b. All vessels of 30 meters or more but less than 100 gross tons carrying one or more passengers for hire;

c. All nonpower-driven vessels greater than 30 meters which are not presently required to carry a radiotelephone except unmanned vessels or those being towed or pushed;

d. All vessels engaged in towing alongside or astern, or in pushing ahead, which are less than 8 meters, where (1) the combined overall length of the vessel towing, the towing apparatus, and the vessel or object being towed is 45 meters or more; or (2) the vessel or object towed is 30 meters or more in overall length.

The Traffic Separation Scheme and Precautionary Areas "J" and "JA" mentioned in these regulations are IMO approved, and the geographical coordinates for these areas agree with those used in "IMO Ship's Routeing." However, the Port Angeles Precautionary Area is not IMO approved.

Discussion of Comments and Resultant Changes to NPRM

The one comment received was from the National Ocean Service which pointed out several administrative errors, such as spelling and wording. Editorial changes were made to correct these errors prior to the expiration of the comment period (48 FR 39244, August 30, 1983). Representatives from U.S. and Canadian Coast Guards met several times to review both Canadian and U.S. regulations. As a result of these meetings, the Thirteenth Coast Guard District, via the Joint Coordinating Group, has recommended several changes to the NPRM to enhance readability. A notation was also added discussing the applicability of the North American Datum (1983) to the geographic coordinates used in these regulations. All of the changes are administrative, editorial, or structural in nature. No substantive changes have been made to the rule as proposed. These changes have been incorporated into this Final Rule.

Regulatory Evaluation

This Final Rule is considered to be non-major under Executive Order 12291 and "non-significant" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). The economic impact of this final rule has been found to be so minimal that further evaluation is unnecessary. The rule provides certain operating directives to vessels in the affected area, but these are minimal and will not have any appreciable cost impact. Ninety-nine per

cent of all vessels that will be required to participate under these rules have been participating voluntarily since the inception of the Puget Sound Vessel Traffic Service in September 1972. The rule does require radiotelephones to be carried on some vessels which are not presently required to carry them; however, the number of vessels in these categories is small and these regulations would not affect most recreational and fishing vessels. The cost to equip a vessel with equipment required by these regulations, a radiotelephone, would average $400 per unit. Since the impact of this final rule is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

Reporting and Recordkeeping Requirements

This proposed rulemaking contains an information collection requirement. This item has been submitted to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and has been approved by OMB under control number 2115–0540.

Environmental Impact

An Environmental Assessment (EA) for this action was prepared by the Coast Guard and circulated in accordance with OMB Circular A–95 Clearinghouse and COMDTINST M16475.1A. Based upon the EA, a Finding of No Significant Impact (FONSI) has been approved.

Federalism Assesssment

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

List of Subjects in 33 CFR Part 161

Navigation (water), Vessels, Traffic separation scheme.

For reasons set forth in the preamble, 33 CFR Part 161 is amended as follows:

PART 161—VESSEL TRAFFIC MANAGEMENT

1. The authority citation for Part 161 is revised to read as follows:

Authority: 33 U.S.C. 1231; 49 CFR 1.46.

2. Subpart B is amended by adding §§ 61.200 through 161.266 under the undesignated center heading "Juan de Fuca Region Cooperative Vessel Traffic Management System" to read as follows:

Subpart B—Vessel Traffic Services

* * * * *

Juan De Fuca Region Cooperative Vessel Traffic Management System

General Rules

Sec.

161.200 Purpose.
161.201 Applicability.
161.202 Vessel exemptions.
161.203 Definitions.
161.204 Vessel operation in the CVTMS area.
161.205 CVTMC directions.
161.206 Requirements to carry regulations.
161.207 Laws and regulations not affected.
161.208 Authorization to deviate from these rules; equivalent procedures.
161.210 Emergencies.

Communication Rules

161.212 Radio listening watch.
161.214 Use of designated frequencies.
161.216 Time.
161.218 English language.
161.220 Radiotelephone equipment failure.
161.222 Report of radio failure.
161.224 Report of impairment to the operation of the vessel.
161.226 Miscellaneous reports.

Vessel Movement Reporting System (VMRS) Rules

161.227 Local harbor report.
161.228 Initial report.
161.231 Underway report.
161.232 Zone boundary and calling-in-point report.
161.234 Follow-up report.
161.236 Final report.

Traffic Separation Scheme (TSS) Rules

161.242 Vessel operation in the TSS.

Descriptions and Geographic Coordinates

161.254 CVTMS Area.
161.256 Tofino Zone.
161.258 Seattle Zone.
161.260 Vancouver Zone.
161.262 Separation zones.
161.264 Traffic lanes.
161.266 Precautionary areas.

* * * * *

Subpart B—Vessel Traffic Services

Juan De Fuca Region Cooperative Vessel Traffic Mangement System

General Rules

§ 161.200 Purpose.

Sections 161.200 to 161.266 prescribe rules for vessel operation in the Cooperative Vessel Traffic Management System (CVTMS) Area of the Juan de Fuca region. These rules are intended to enhance safe and expeditious vessel traffic movement, to prevent groundings and collisions, and to minimize the risk of property damage and pollution to the marine environment.

§ 161.201 Applicability.

(a) The CVTMS is established as a program jointly managed by the United States and Canada. The CVTMS Area is divided into zones, each of which is administered solely by the United States or Canada. The appropriate Vessel Traffic Management Center administers, within its zone, the regulations issued by both nations. Each set of regulations applies only to the waters over which the issuing nation has jurisdiction and each nation will enforce only its own set of regulations. With the exception of the vessels listed in § 161.202, the United States' regulations apply in the CVTMS Area to:

(1) Each vessel of 30 meters or more in length;

(2) Each vessel that is engaged in towing alongside or astern, or in pushing ahead, one or more vessels or objects, other than fishing gear, where:

(i) The combined overall length of the vessel towing, the towing apparatus, and the vessel or object towed is 45 meters or more; or

(ii) The vessel or object towed is 20 meters or more in overall length.

(b) Geographic coordinates expressed in terms of latitude or longitude, or both, are not intended for plotting on maps or charts whose referenced horizontal datum is the North American Datum of 1983 (NAD 83), unless such geographic coordinates are expressly labeled NAD 83. Geographic coordinates without the NAD 83 reference may be plotted on maps or charts referenced to NAD 83 only after application of the appropriate corrections that are published on the particular map or chart being used.

§ 161.202 Vessel exemptions.

The rules contained in §§ 161.212 through 161.236 do not apply to:

(a) Fishing vessels of less than 300 gross tons;

(b) Unmanned vessels or vessels which are being towed or pushed, or;

(c) Vessels engaged in towing or pushing within a booming ground.

§ 161.203 Definitions.

As used in §§ 161.200 through 161.266:

"Authority" means the Commissioner of the Canadian Coast Guard or the Commandant of the United States Coast Guard.

"Berth" means any wharf, pier, anchorage, or mooring buoy.

"Cooperative Vessel Traffic Management Center (CVTMC)" means the shorebased facility established by the appropriate Authority for managing vessel traffic in the CVTMS.

"Cooperative Vessel Traffic Management Center direction (CVTMC

direction)" means an instruction issued by a vessel traffic management center to one or more ships, for the purpose of managing vessel traffic.

"Cooperative Vessel Traffic Management System (CVTMS)" means the system of vessel traffic management established and jointly operated by Canada and the United States within the waters of the CVTMS Area.

"Cooperative Vessel Traffic Management System Area (CVTMS Area)" means the waters described in § 161.254.

"ETA" means estimated time of arrival.

"National vessel traffic service" means a vessel traffic service which is operated and administered solely by Canada or the United States and is not a part of the Cooperative Vessel Traffic Management System.

"Person" means an individual, firm, corporation, association, partnership, or governmental entity.

"Precautionary Area" means a routing measure comprising an area within defined limits where ships must navigate with particular caution and within which the direction of traffic flow may be recommended.

"Separation Zone" means an area of the TSS separating the opposing traffic lanes.

"Traffic Lane" means an area of the TSS within defined limits in which one way traffic is established. Natural obstacles, including those forming separation zones, may constitute a boundary.

"Traffic Separation Scheme (TSS)" means the routing measure aimed at the separation of opposing streams of traffic by appropriate means and by the establishment of traffic lanes.

"Vessel Movement Reporting System (VMRS)" means a system by which vessel progress is monitored by reports from a vessel rather than by electronic surveillance.

"Zone" means a geographic subdivision of the CVTMC Area, defined for purposes of allocating responsibility for vessel traffic management to one of the authorities.

§ 161.204 Vessel operation in the CVTMS Area.

No person, except those authorized to do so under § 161.208, may cause or authorize the operation of a vessel in the CVTMS Area contrary to the rules in § 161.200 through 161.266.

§ 161.205 CVTMC directions.

(a) During conditions of vessel congestion, adverse weather, reduced visibility, or other hazardous circumstances in a CVTMS Zone, the CVTMC may issue directions to control and supervise traffic, and may specify times when vessels may enter, move within or through, or depart from ports, harbors, or other waters of the CVTMS Zone.

(b) When a vessel is navigating in an unsafe manner or with improperly functioning equipment, the CVTMC may direct the vessel's movement, including directing it to anchor or moor.

(c) The master, pilot, or person directing the movement of a vessel shall comply with each direction issued to the vessel.

§ 161.206 Requirement to carry regulations.

(a) The master of a vessel shall ensure that a copy of the current Cooperative Vessel Traffic Management System regulations, Title 33, Code of Federal Regulations, Sections 161.200–161.266 (33 CFR 161.200–161.266), is available on board the vessel when it is in the CVTMS Area. The regulations are reprinted in the CVTMS User's Manual.

(b) A CVTMS User's Manual, which contains the regulations and other useful information for operating in the CVTMS area, is available from:

Officer-in-Charge, Transport Canada, Canadian Coast Guard Vessel Traffic Management Centre, P.O. Box 190, Ucluelet, BC Canada, VOR 3AO Phone: (604) 726–7777

Commanding Officer U.S. Coast Guard Vessel Traffic Service 1519 Alaskan Way S., Seattle, Washington 98134, Phone: (206) 286–5640

Officer-in-Charge, Transport Canada, Canadian Coast Guard, Vessel Traffic Management Centre Room 1006, Kapilano 100, Park Royal West Vancouver, BC Canada, V7T 1A2, Phone: (604) 666–6011.

§ 161.207 Laws and regulations not affected.

Nothing in §§ 161.200 through 161.266 is intended to relieve any person from complying with any other applicable laws or regulations.

§ 161.208 Authorization to deviate from these rules; equivalent procedures.

(a) Where these regulations require a particular procedure, the Commander, Thirteenth Coast Guard District may, upon written request, authorize any other procedure for use in U.S. waters if it is determined that such other procedure provides a level of safety equivalent to that provided by the required procedure. An application for an authorization must state the need and fully describe the proposed procedure.

(b) The CVTMC may, upon request, issue an authorization to deviate from any rule in §§ 161.200 through 161.266 for a voyage or part of a voyage on which a vessel is embarked or about to embark.

§ 161.210 Emergencies.

In an emergency, the master, pilot, or person directing the movement of the vessel may deviate from any rule in §§ 161.200 through 161.266 to the extent necessary to avoid endangering persons, property, or the environment, and shall report the deviation to the CVTMC as soon as possible.

Communication Rules

§ 161.212 Radio listening watch.

(a) When underway, or anchored or moored to a buoy, in the CVTMS Area, the master, pilot, or person directing the movement of a vessel shall ensure that a radiotelephone listening watch is maintained on the frequency designated in § 161.214 for the sector of the CVTMS Area in which the vessel is operating, except when transmitting on that frequency.

(b) All reports and communications required by these rules must be made to the CVTMC on its designated frequency using a radiotelephone that is maintained in effective operating condition and is capable of operation on the navigational bridge of the vessel, or, in the case of a dredge, at its main control station.

(1) The radio listening watch required by paragraph (a) of this section may be maintained in a location other than the vessel's navigational bridge when the vessel is anchored or moored to a buoy.

§ 161.214 Use of designated frequencies.

(a) In accordance with Federal Communication Commission regulations, no person may use the frequency or frequencies designated in this section to transmit any information other than information necessary for the safety of vessel traffic.

(b) All transmissions on the CVTMS frequencies shall be initiated on low power; high power may only be used if low power communications are unsuccessful.

(c) The frequencies to be used when communicating with the CVTMC and with other vessels are as follows:

Zone	Primary frequency		Secondary frequency	
	MHz	Channel	MHz	Channel
Tofino Zone.....	156.725	74	156.550	11

Zone	Primary frequency		Secondary frequency	
	MHz	Channel	MHz	Channel
Seattle Zone	156.700	14	156.650	13
Vancouver Zone	156.550	11	156.725	74

§ 161.216 Time.

Each report required by §§ 161.200 through 161.266 must specify time using:

(a) The zone time in effect in the CVTMS Area; and

(b) The 24-hour clock system.

§ 161.218 English language.

Each report required by §§ 161.200 through 161.266 shall be made in the English language.

§ 161.220 Radiotelephone equipment failure.

(a) If the radiotelephone required by § 161.212 ceases to operate, the master shall ensure that it is restored to operating condition as soon as possible. The failure of a vessel's radiotelephone equipment, while the vessel is underway, shall not in itself constitute a violation of these rules, nor shall it obligate the vessel to moor or anchor; however, required reports shall be made by other means, if possible.

(b) A vessel that cannot meet the radiotelephone requirements of these rules may not get underway in the CVTMS Area without permission from the CVTMC.

§ 161.222 Report of radio failure.

Whenever the master, pilot, or person directing the movement of a vessel deviates from any rule in §§ 161.200 through 161.266 because of a radio failure, the deviation and radio failure shall be reported to the CVTMC as soon as possible.

§ 161.224 Report of impairment to the operation of the vessel.

The master, pilot, or person directing the movement of a vessel in the CVTMS Area shall report to the CVTMC as soon as possible:

(a) Any condition on the vessel that may impair its navigation, such as fire, defective propulsion machinery, defective steering equipment, defective radar, defective gyrocompass, defective echo depth sounding device, defective communications equipment, or defective navigational lighting;

(b) Any tow that the towing vessel is unable to control or can control only with difficulty; or

(c) When involved in a grounding, collision, or ramming of a fixed or floating object.

§ 161.226 Miscellaneous reports.

The master, pilot, or person directing the movement of a vessel within the CVTMS Area should report to the CVTMC whenever any of the following circumstances are observed:

(a) Another vessel in apparent difficulty or involved in a casualty.

(b) An obstruction which is dangerous to navigation.

(c) Any aid to navigation which is malfunctioning, damaged, missing, or off position.

(d) Any pollution of the marine environment.

(e) Any vessel which may be creating a hazard to traffic.

(f) Any other danger to navigation including adverse weather conditions.

(g) Any significant change in information previously supplied under this section.

Vessel Movement Reporting System (VMRS) Rules

§ 161.227 Local harbor report.

(a) When a vessel moves and remains within a three mile radius of its point of departure in the CVTMS Area, the movement is a local harbor movement. A vessel making a local harbor movement is exempted from the reporting requirements in Initial report (§ 161.228), Underway report (§ 161.231), and Final report (§ 161.236).

(b) At least 5 minutes, but not more than 45 minutes, before a vessel makes a local harbor movement under paragraph (a) of this section, the master, pilot, or person directing the movement of the vessel shall report, or cause to be reported the following information to the CVTMC:

(1) Name and type of vessel.

(2) Position of departure.

(3) Time of departure.

(4) Destination, route, and ETA.

(5) General description of operation to be performed.

(c) The master, pilot, or person directing the movement of the vessel, shall report, or cause to be reported, any changes from the information reported under paragraph (b) of this section, except that departing or ETA times must be reported only if they vary by 15 minutes or more from the report.

§ 161.228 Initial report.

(a) At least 15 minutes, but not more than 2 hours, before a vessel enters or begins to navigate in the CVTMS Area, the master, pilot, or person directing the movement of the vessel shall report by radiotelephone or telephone the following information to the appropriate CVTMC:

(1) The type and name of the vessel.

(2) The point of entry in the CVTMS Area.

(3) Estimated time of entering or beginning to navigate in the CVTMS Area.

(4) Destination, ETA at destination, and route in the CVTMS Area.

(5) Anticipated speed of the vessel in knots.

(6) Length and deepest draft of the vessel.

(7) Whether or not any dangerous cargo listed in Part 160, Subpart C of this Chapter is on board the vessel or its tow if bound to or from a U.S. port.

(8) Any impairment to the operation of the vessel as described in § 161.224 (a) and (b).

(9) Any planned maneuvers that may impede traffic.

(b) Vessels making movements that require Local harbor reports (§ 161.227) are exempt from making this report.

(c) Vessels that will be entering from a national VTS Area and have previously reported the above information to another VTC are exempt from making this report.

§ 161.231 Underway report.

As soon as a vessel enters or begins to navigate in the CVTMS Area, the master, pilot, or person directing the movement of the vessel shall report the following to the CVTMC:

(a) Vessel name.

(b) Vessel location.

§ 161.232 Zone boundary and calling-in-point report.

(a) When a vessel crosses a zone boundary, the master, pilot, or person directing the movement of the vessel shall report the following information to the CVTMC by radiotelephone on the designated frequency for the zone in which the vessel is located or leaving and on the designated frequency for the zone that the vessel is entering:

(1) Vessel name.

(2) Vessel location.

(b) When directed to do so by the CVTMC, vessels shall report, on either a one-time basis, or as a series of reports, their:

(1) Vessel name.

(2) Vessel location.

§ 161.234 Follow-up report.

The master, pilot, or person directing the movement of a vessel shall report any information which has changed since the previous report, including, but not limited to, ETA, speed, destination, and route.

§ 161.236 Final report.

No later than 30 minutes after a vessel anchors in, moors in, or departs from the CVTMS Area, the master, pilot, or person directing the movement of the vessel shall report the place of anchoring, mooring, or departure to the CVTMC.

Traffic Separation Scheme (TSS) Rules

§ 161.242 Vessel operation in the TSS.

The master, pilot, or person directing the movement of a vessel in the TSS described in §§ 161.262 through 161.266, shall comply with Rule 10 of the International Regulations for Prevention of Collisions at Sea, 1972.

Descriptions and Geographic Coordinates

§ 161.254 CVTMS Area.

For the purpose of these rules, the CVTMS Area consists of the waters from a point in the Pacific Ocean at 48°23'30" N., 124°48'37" W.; thence due east to the Washington State coast at Cape Flattery; thence southeastward along the Washington coastline to New Dungeness Light; thence northerly to Puget Sound Traffic Lane Entrance Lighted Buoy "S"; thence to Rosario Strait Traffic Lane Entrance Lighted Horn Buoy "R"; thence to Hein Bank Lighted Bell Buoy; thence to Cattle Point Light on San Juan Island; thence along the shoreline to Lime Kiln Light; thence to Kellett Bluff Light on Henry Island; thence to Turn Point Light on Stuart Island; thence to Skipjack Island Light; thence to Sucia Island Daybeacon 1; thence along the shoreline of Sucia Island to a point at 48°46'06" N., 122°53'30" W.; thence to Clements Reef Buoy "2"; thence to Alden Bank Lighted Gong Buoy "A"; thence to Birch Point at 48°56'33" N., 122°49'18" W.; thence along the shoreline to a point where the shoreline intersects the 49° north parallel of latitude; thence due west to the Canadian shoreline at Maple Beach; thence along the shoreline around Point Roberts to a point where the shoreline intersects the 49° north parallel of latitude at Boundary Bluff; thence due west to a point at 49°00'00" N., 123°19'14" W.; thence southerly to Active Pass Light; thence to East Point on Saturna Island; thence to Point Fairfax Light on Moresby Island; thence to Discovery Island Light; thence to Trail Island Light; thence to Brotchie Ledge Light; thence to Albert Head Light; thence westward along the Canadian shoreline to the intersection of the shoreline with 48°35'45" N., near Bonilla Point; thence due west to a point at 48°35'45" N., 124°47'30" W.; thence southerly along a rhumb line to the starting point at 48°23'30" N., 124°48'37" W.

§ 161.256 Tofino Zone.

The Tofino Zone comprises that portion of the CVTMS Area west of 124°40'00" W.

§ 161.258 Seattle Zone.

The Seattle Zone comprises that portion of the CVTMS Area in the Strait of Juan de Fuca, bordered on the west by 124°40'00" W., and on the north and east by lines drawn from the tip of Church Point on the Canadian shoreline to Race Rocks Light; thence easterly to the intersection of the U.S./Canadian border at position 48°17'04" N., 123°14'51" W.; thence northeasterly to Hein Bank Lighted Bell Buoy; thence southerly to Rosario Strait Traffic Lane Entrance Lighted Horn Buoy "R"; thence to Puget Sound Traffic Lane Entrance Lighted Buoy "S"; thence to New Dungeness Light.

§ 161.260 Vancouver Zone.

The Vancouver Zone comprises that portion of the CVTMS Area north of a line drawn from the tip of Church Point on the Canadian shoreline to position 48°17'04" N., 123°14'51" W.; thence northeasterly to Hein Bank Lighted Bell Buoy; thence northeasterly to Cattle Point.

§ 161.262 Separation zones.

The CVTMS Area contains traffic separation zones bounded by lines connecting the following geographical positions:

(a) Juan de Fuca separation zone.
(1) 48°28.8' N., 124°43.6' W.
(2) 48°13.4' N., 123°56.9' W.
(3) 48°13.4' N., 123°31.7' W.
(4) 48°14.7' N., 123°31.8' W.
(5) 48°17.8' N., 124°00.6' W.
(6) 48°29.6' N., 124°43.6' W.

(b) Port Angeles separation zone.
(1) 48°10.4' N., 123°26.5' W.
(2) 48°12.3' N., 123°27.9' W.
(3) 48°12.5' N., 123°27.3' W.
(4) 48°10.6' N., 123°25.8' W.

(c) Juan de Fuca western approach separation zone.
(1) 48°30.5' N., 124°58.5' W.
(2) 48°30.2' N., 124°54.0' W.
(3) 48°28.9' N., 124°54.1' W.
(4) 48°28.8' N., 124°58.6' W.

(d) Juan de Fuca southwestern approach separation zone.
(1) 48°23.2' N., 124°55.5' W.
(2) 48°25.0' N., 124°52.0' W.
(3) 48°23.7' N., 124°50.1' W.
(4) 48°21.4' N., 124°52.9' W.

(e) Victoria separation zone.
(1) 48°20.7' N., 123°25.1' W.
(2) 48°16.2' N., 123°28.5' W.
(3) 48°15.8' N., 123°27.1' W.
(4) 48°20.5' N., 123°24.4' W.

§ 161.264 Traffic lanes.

The traffic lanes, which extend to, but do not enter the precautionary areas, are located on both sides of the separation zones and are bounded by lines connecting the following geographical points:

Western Lanes

(a) A traffic lane for northwestbound traffic is established between the separation zone and a line connecting the following geographical positions:
(1) 48°15.6' N., 123°31.0' W.
(2) 48°18.8' N., 124°00.2' W.
(3) 48°30.7' N., 124°43.5' W.

(b) A traffic lane for southeastbound traffic is established between the separation zone and a line connecting the following geographical positions:
(1) 48°27.1' N., 124°43.8' W.
(2) 48°27.1' N., 124°41.8' W.
(3) 48°12.4' N., 123°57.2' W.
(4) 48°12.4' N., 123°30.2' W.

Southern Lanes

(c) A traffic lane for northbound traffic is established between the separation zone and a line connecting the following geographical positions:
(1) 48°10.9' N., 123°25.0' W.
(2) 48°13.6' N., 123°26.1' W.

(d) A traffic lane for southbound traffic is established between the separation zone and a line connecting the following geographical positions:
(1) 48°12.4' N., 123°30.2' W.
(2) 48°10.1' N., 123°27.3' W.

Western Approach

(e) A traffic lane for westbound traffic is established between the separation zone and a line connecting the following geographical positions:
(1) 48°31.9' N., 124°53.3' W.
(2) 48°32.4' N., 124°57.8' W.

(f) A traffic lane for eastbound traffic is established between the separation zone and a line connecting the following geographical positions:
(1) 48°27.3' N., 124°58.3' W.
(2) 48°27.5' N., 124°53.8' W.

Southwestern Approach

(g) A traffic lane for northeastbound traffic is established between the separation zone and a line connecting the following geographical positions:
(1) 48°20.6' N., 124°51.0' W.
(2) 48°23.2' N., 124°48.8' W.

(h) A traffic lane for southwestbound traffic is established between the separation zone and a line connecting the following geographical positions:
(1) 48°26.1' N., 124°53.0' W.
(2) 48°24.4' N., 124°56.7' W.

Northern Lanes

(i) A traffic lane for southbound traffic is established between the separation zone and a line connecting the following geographical positions:

(1) 48°20.9' N., 123°26.1' W.

(2) 48°15.6' N., 123°31.0' W.

(j) A traffic lane for northbound traffic is established between the separation zone and a line connecting the following geographical positions:

(1) 48°13.6' N., 123°26.1' W.

(2) 48°20.2' N., 123°23.4' W.

§ 161.266 Precautionary areas.

(a) Precautionary area "J".

A precautionary area is bounded as follows: from 48°31.9' N., 124°53.3' W.; thence southeasterly to 48°30.7' N., 124°43.5' W.; thence southerly to 48°27.1' N., 124°43.8' W.; thence westerly to 48°27.1' N., 124°45.4' W.; thence southwesterly to 48°23.2' N., 124°48.8' W.; thence northwesterly and northerly by an arc of 7 nautical miles radius, centered at 48°29.2' N., 124°43.6' W.; thence to the point of origin.

(b) Precautionary area "JA".

A precautionary area of radius two miles is centered upon geographical position: 48°14.2' N., 123°28.9' W.

(c) Port Angeles precautionary area.

An area enclosed by a line beginning on the shoreline at New Dungeness Spit at 48°11'00" N., 123°06'30" W.; thence due north to 48°17'10" N., 123°06'30" W.; thence southwesterly to geographical position 48°10'00" N., 123°27'38" W.; thence due south to the shorelines, thence along the shoreline to the point of beginning.

Date: April 10, 1989.

Robert T. Nelson,

Rear Admiral, U.S. Coast Guard Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 89-9028 Filed 4-14-89; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 165

[COTP Prince William Sound Regulation 89-01]

Safety Zone Regulation: Prince William Sound

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a combination of fixed and mobile safety zones around the T/V EXXON VALDEZ in Prince William Sound, Alaska. These zones are required to assist in the salvage and pollution response operations resulting from the grounding of the T/V EXXON VALDEZ. Entry into these zones is prohibited unless authorized by the Captain of the Port, Prince William Sound.

EFFECTIVE DATE: This regulation becomes effective on 4 April 1989. It will remain effective until the T/V EXXON VALDEZ departs Prince William Sound.

FOR FURTHER INFORMATION CONTACT: LT Rice at 907-835-4791.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing a NPRM and delaying its effective date would be contrary to the public interest due to the emergency nature of the salvage operations, the major impact on the environment, and the limited duration of this safety zone.

Drafting Information

Drafter of this regulation is LT R.N. Janelle, project officer for the Captain of the Port, and LCDR Mackell, project attorney, 17th Coast Guard District Legal Office.

Discussion of Regulations

The event requiring this regulation began with the grounding of the T/V EXXON VALDEZ in Prince William Sound on or about 0030 March 24, 1989. Damage to the vessel was extensive and resulted in the discharge of 10 million gallons of crude oil. This event is expected to draw various groups of onlookers aboard a variety of vessels. Primary hazards are collisions with small vessels and environmental damage resulting from vessel contact with oil.

This regulation is issued pursuant to 33 U.S.C. 1225 and 1231, 50 U.S.C. 191, as set out in the authority citation for all of Part 165.

List of Subjects in 33 CFR Part 165

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

Regulation

In consideration of the foregoing, Subpart C of Part 165, Title 33 Code of Federal Regulations, is amended as follows:

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

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

2. A new § 165.T1702 is added to read as follows:

§ 165.T1702 Safety Zone: Prince William Sound, Alaska.

(a) *Location:* The following area is a safety zone: That portion of Prince William Sound, Alaska centered on position 60-51 N, 146-52 W and within 1,000 yards of the T/V EXXON VALDEZ. This safety zone will become a mobile safety zone with a 1,000 yard radius centered on the ship when the ship is moved to position 60-37 N, 147-29 W in Outside Harbor for temporary repairs. Upon anchoring in Outside Harbor, a fixed safety zone with a 1,000 yard radius centered on the ship remains effective until departure. Upon departure, a mobile safety zone with a 1,000 yard radius centered on the ship is established and will remain effective until the T/V EXXON VALDEZ is abeam of Seal Rocks in Hitchenbrook Entrance.

(b) *Effective Date:* This regulation became effective at 4:00 pm, April 4, 1989. It will remain in effect until the >T/V EXXON VALDEZ departs Prince William Sound.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port, Prince William Sound. (2) A fixed safety zone with a 1,000 yard radius and centered on the T/V EXXON VALDEZ is established at position 60-51 N, 146-52 W. This zone will become a mobile safety zone with a 1,000 yard radius centered on the ship, during the vessel's transit to the temporary repair anchorage in Outside Bay on Naked Island in position 60-37 N, 147-29 W. Upon anchoring in Outside Harbor, a fixed safety zone with a 1,000 yard radius centered on the ship remains effective until departure. Upon departure, a mobile safety zone with a 1,000 yard radius centered on the ship is established and will remain effective until the T/V EXXON VALDEZ is abeam of Seal Rocks in Hitchenbrook Entrance.

Dated: April 4, 1989.

S. A. McCall,

Commander, U.S. Coast Guard, Captain of the Port Prince William Sound.

[FR Doc. 89-9026 Filed 4-14-89; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3541-6]

Approval and Promulgation of Air Quality Implementation Plans; Shasta, Tehama, and Yolo-Solano Air Pollution Control Districts

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On November 25, 1987, the California Air Resources Board (CARB) submitted a set of revisions to the California State Implementation Plan (SIP). This notice takes action on the noncontroversial, generally administrative revisions, affecting the Shasta County Air Pollution Control District (APCD), the Tehama County APCD, and the Yolo-Solano APCD. EPA has determined that these revisions should be approved because they strengthen or retain existing emission control requirements, and are consistent with the Clean Air Act, 40 CFR Part 51, and EPA policy.

EFFECTIVE DATE: This action will be effective on June 16, 1989, unless notice is received within 30 days that adverse or critical comments will be submitted.

ADDRESSES: Please address any comments to: Regional Administrator, Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105, Attn: State Implementation Plan Section (A–2–3).

Copies of EPA's Technical Evaluation Report and the submitted revisions are available for public inspection during normal business hours at the EPA Region 9 office. The submitted revisions can also be reviewed at the California Air Resources Board and the appropriate Air Pollution Control Districts listed below.

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

Office of the Federal Register, 1100 L Street NW., Room 8301, Washington, DC 20460.

California Air Resources Board, P.O. Box 2815, 1102 "Q" Street, Sacramento, CA 95812.

Shasta County Air Pollution Control District, 1855 Placer St., Redding, CA 96001.

Tehama County Air Pollution Control District, 1760 Walnut Street, P.O. Box 38, Red Bluff, CA 96080.

Yolo-Solano Air Pollution Control District, 323 First Street, Suite 5, P.O. Box 1006, Woodland, CA 95695.

FOR FURTHER INFORMATION CONTACT: Andrew L. Wickens, State Implementation Plan Section (A–2–3), Air Management Division, Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105, (415) 974–7644; FTS 454–7644.

SUPPLEMENTARY INFORMATION:

Background

The following rules were submitted by the California Air Resources Board for incorporation into the California SIP on November 25, 1987. This notice contains noncontroversial rules where adverse public comment is not anticipated. These revisions either clarify or strengthen existing rules.

Shasta County APCD

Rule 1:2 Definitions
Rule 2:6 Open Burning: General Provisions
Rule 2:7 Conditions for Open Burning
Rule 2:8 Agricultural Burning
Rule 2:19 Appeals

Tehama County APCD

Rule 1.2 Definitions
Rule 3.1 Agricultural Burning
Rule 3.6 Preparation of Agricultural Wastes
Rule 3.11 Restricted Burning
Rule 3.12 Wildland Vegetation Management Burning
Rule 3.13 Range Improvement Burning
Rule 3.14 Forest Management Burning
Rule 3.15 Penalties
Rule 4.3 Particulate Matter
Rule 4.24 Fugitive, Indirect, or Non-Traditional Sources

Yolo-Solano APCD

Rule 3.7 Information

Evaluation

The above rule revisions affect definitions and Wildland Vegetation Management Burning limitations, alter agricultural burning regulations, clarify the appeals process, regulate particulate matter, and specify information to be given to the Air Pollution Control Officer. The rules have been evaluated by EPA, and have been found to be consistent with the Clean Air Act, 40 CFR Part 51, and EPA policy. All of the rules either strengthen or maintain the existing emission limits contained in the SIP. EPA's detailed evaluation reports of the submitted rules are available at the Region 9 office in San Francisco.

EPA Action

Pursuant to section 110 of the Clean Air Act, EPA is approving the rules listed above, and incorporating them into the California SIP. In addition to section 110, EPA is approving Yolo-Solano Rule 3.7 under Part D of the Clean Air Act as representing reasonably available control technology (RACT). EPA is publishing this action without prior proposal because the Agency views these as noncontroversial amendments and anticipates no adverse public comments. This action will be effective 60 days from the date of publication of this **Federal Register** unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted. 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 June 16, 1989.

Regulatory Process

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 16, 1989. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

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

Date: March 13, 1989.

Daniel W. McGovern,

Regional Administrator, Region 9.

Subpart F of Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

Subpart F—California

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

Authority: 42 U.S.C. 7401–7642.

2. Section 52.220 is amended by adding paragraph (c) (175) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(175) Revised regulations for the following APCD's were submitted on November 25, 1987, by the Governor's designee.

(i) Incorporation by Reference.

(A) Shasta County AQMD.

(*1*) Amended rules 1:2, 2:6.a.4.(c), 2:6.b, 2:7.a, 2:7.c, 2:8.c.2.(a), 2:8.c.3.(a), 2:8.c.4, and 2:19, adopted on July 28, 1987.

(B) Tehama County APCD.

(*1*) New or amended rules 1:2, 3:1, 3:6(1), 3:11(a), 3:12, 3:13.j, 3:14(10), 3:15. 4:3, and 4:24, adopted on August 4, 1987.

(C) Yolo-Solano APCD.

(*1*) Amended rule 3:7(d), adopted on August 12, 1987.

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[FR Doc. 89–6869 Filed 4–14–89; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 52

[SC–012b; FRL–3556–2]

Approval and Promulgation of Implementation Plans; South Carolina; Volatile Organic Compound (VOC) Emissions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is today disapproving the May 24, 1985, version of revisions made by South Carolina in its Air Pollution Control Regulations and Standards and submitted to EPA June 5, 1985. These revisions create deficiencies in the State's ozone control strategy. Today's disapproval action provides the basis for correcting the deficiencies expeditiously.

DATE: This action will be effective June 16, 1989 unless notice is received within 30 days of publication that adverse or critical comments will be submitted.

ADDRESSES: Written comments should be addressed to Diane Altsman of EPA Region IV, Air Programs Branch (see EPA Region IV address below). Copies of the materials submitted by South Carolina may be examined during normal business hours at the following locations:

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

South Carolina Department of Health and Environmental Control, Bureau of Air Quality Control, 2600 Bull Street, Columbia, South Carolina 29201

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

FOR FURTHER INFORMATION CONTACT: Diane Altsman, Air Programs Branch, EPA Region IV, at the above address and telephone number (404) 347–2684 or FTS 257–2864.

SUPPLEMENTARY INFORMATION: On June 5, 1985, the South Carolina Department of Health and Environmental Control submitted to EPA for approval revisions to the volatile organic compound (VOC) provisions of the South Carolina Air Pollution Control Regulations and Standards. These revisions were adopted by the South Carolina Board of Health and Environmental Control on December 20, 1984, and were forwarded to the State Legislature for approval. The revisions became State-effective on May 24, 1985. EPA finds the revisions to be deficient for the following reasons.

1. Regulation 62.5, Standard No. 5, Section I, Part B.2—South Carolina's VOC regulations contain a general applicability provision with a 100 tpy cutoff level. These regulations must meet the cutoff level specified in the appropriate EPA Control Techniques Guideline (CTG) category. For non-CTG sources, and for CTG sources that do not have a cutoff level, recommended cutoffs are described in Appendix D of the November 24, 1987, post-1987 ozone policy statement (52 FR 45044). This policy statement reiterates existing EPA policy at the time of South Carolina's SIP submittal.

2. Regulation 62.1, Section I, 39—A vapor pressure of 0.1 mm Hg should not be used to define VOC. Such a definition would exempt compounds of low volatility which under certain processes, would volatilize and therefore participate in photochemical reactions.

3. Regulation 62.5, Standard No. 5, Section I, Part A.1, A.9, A.22, A.38, A.39, A.51, A.75—These various coating definitions need to specifically include "functional coatings" as well as protective or decorative films.

4. Regulation 62.5, Standard No. 5, Section II, Part C.1—This regulation for the surface coating of paper, vinyl, and fabric does not specifically apply to saturation processes and must therefore be revised to include them.

5. Regulation 62.5, Standard No. 5, Section I, Part A.75—The definition of "vinyl coating" needs to be revised to state that it does not include the application of "vinyl organisol" as well as vinyl plastisol to the fabric.

6. Regulation 62.5, Standard No. 5, Section II, Part A, B, C, D, E, F, G, H, N, O, P, Q, R, S, T—In the provision for specific sources several concerns have been identified. They are as follows:

(i) The regulations within Section II, Parts A through H and Parts N through T need to be revised to clearly state compliance period (e.g., hourly, daily) and averaging method (arithmetic or weighted).

(ii) Capture systems are required as a method of control technology for the following surface coating regulations: Section II—Provisions for Specific Sources Part A.2.e., B.2.e., C.2.e., D.2.e., E.2.e., Part F.3.e., G.3.e., H.3.e.

(iii) Regulations which require capture efficiency systems must specify test methods.

7. Regulation 62.5 Standard No. 5, Section I, Part F, Recordkeeping, Reporting, Monitoring—The recordkeeping requirement provisions as stated in the May 25, 1988, OAQPS document entitled, "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations," should be included within this regulation.

8. Regulation 62.5, Standard No. 5, Section I, Part E, Volatile Organic Compound Compliance Testing—It is not clear in the VOC compliance testing requirement that the most recent test methods must be used. The regulation must be revised to state this.

At this time, EPA is disapproving the revisions to the South Carolina State Implementation Plan as listed above. This disapproval is also based on the following considerations.

On May 3, 1988, EPA released the latest data on the degree to which areas throughout the nation have attained the NAAQS. On May 26, 1988, the Honorable Carroll A. Campbell was notified that the South Carolina SIP was substantially inadequate to achieve the ozone NAAQS, pursuant to section 110(a)(2)(H) of the Clean Air Act, 42 U.S.C. 7410(a)(2)(H). In this letter, EPA requested that South Carolina respond to the "SIP call" in two phases—the first phase, within 60 days upon receipt of EPA's letter to the State agency (South Carolina Department of Health and Environmental Control) which outlined in detail the SIP call response, and the second phase following the issuance of the final Ozone/CO policy. The first

phase requires that the states initiate certain fundamental activities necessary to continue to make progress in attaining the ozone or CO NAAQS. These required activities include the correction of identified discrepancies between EPA's existing policy and the state's SIP or pending SIP submittal.

On September 9, 1988, EPA requested that South Carolina correct the identified deviations within their SIP. On October 12, 1988, South Carolina notified EPA that regulatory revisions within their SIP must be done either under a State initiative or the need to meet federal requirements. South Carolina additionally state in their October 12, 1988, letter to EPA that the State-initiated revisions involve a more lengthy process, including ratification by the South Carolina General Assembly. In order for the regulatory revisions to meet federal requirements, South Carolina must be able to cite the specific Federal Register notification of a deficiency. Therefore, at South Carolina's written request and in order to facilitate an expedient correction of all EPA-identified deviations within the South Carolina VOC regulations, EPA is today disapproving the regulations that have been identified as being deficient.

Final Action

At South Carolina's request, EPA today disapproves the aforementioned regulatory revisions to the South Carolina SIP.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective May 17, 1989 unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted.

If such a 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 May 17, 1989.

Under 5 U.S.C. 605(b), I certify that this disapproval will not have a significant economic impact on a substantial number of small entities because its purpose is to provide the State the basis for correcting its SIP.

The Office of Management and Budget has waived review of this action, normally required under Executive Order 12291.

Under Section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the Untied States Court of Appeals for the appropriate circuit by May 17, 1989. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone.

Date: April 3, 1989.

Lee A. DeHihns, III,

Acting Regional Administrator.

Part 52 of Chapter 1, Title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

Subpart PP—South Carolina

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

Authority: 42 U.S.C. 7401–7642.

2. A new § 52.2126 is added as follows:

§ 52.2126 Control strategy: Ozone.

(a) The following regulations submitted on June 5, 1985, are disapproved due to deficiences that were identified in accordance with the EPA guidance document entitled "Issues Relating to Cutpoints, Deficiencies, and Deviations" (52 FR 45044).

1. Regulation 62.5, Standard No. 5, Section I, Part B.2
2. Regulation 62.1, Section I, 39
3. Regulation 62.5, Standard No. 5, Section I, Part A.1, A.9, A.22, A.38, A.39, A.51, A.75
4. Regulation 62.5, Standard No. 5, Section II, Part C.1
5. Regulation 62.5, Standard No. 5, Section I, Part A.75
6. Regulation 62.5, Standard No. 5, Section II, Parts A through H and Parts N through T
7. Regulation 62.5, Standard No. 5, Section I, Part F
8. Regulation 62.5, Standard No. 5, Section I, Part E

[FR Doc. 89–9123 Filed 4–14–89; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 58

[FRL–3553–4]

Modification of the Ozone Monitoring Season; Texas

AGENCY: Environmental Protection Agency.

ACTION: Final rule; notice of ozone monitoring season modification.

SUMMARY: Ozone (O_3) is required to be monitored at National Air Monitoring Stations (NAMS) and the State and Local Air Monitoring Stations (SLAMS) sites only during the "O_3 season" as designated in the Aerometric Information Retrieval System (AIRS) files on a state by state basis. Previously, the ozone season for Texas had been designated as the entire year. The State of Texas covers a large geographical area and historical monitoring data indicates that certain areas in Texas are not subject to high O_3 concentrations during the winter months. Therefore, pursuant to 40 CFR 58.13(a)(3), by letter dated January 17, 1989, I made the final determination that Air Quality Control Regions (AQCR) 1, 2, 3, 6, 8, 9, and 12 in Texas are exempted from the twelve month ozone monitoring season and are now subject to a March–October O_3 monitoring timeframe. The modified O_3 season will apply to 1988 O_3 monitoring data and future monitoring efforts unless otherwise revised.

EFFECTIVE DATE: January 17, 1989.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region 6, Air Programs Branch (6T–AN), 1445 Ross Avenue, Dallas, Texas 75202.

Texas Air Control Board, 6330 Highway 290 East, Austin, Texas 78723.

FOR FURTHER INFORMATION CONTACT: Rebecca Caldwell, Air Programs Branch, U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202, (214) 655–7214 or (FTS) 255–7214.

SUPPLEMENTARY INFORMATION:

Background

The State of Texas has an extensive monitoring program since the emissions and meteorological conditions in parts of Texas are conducive to the production of ozone. In addition to the monitors already in place, Texas is also conducting seasonal O_3 monitoring in counties that surround metropolitan areas in order to determine the geographical extent of the high ozone concentrations. Given this need for an increase in the O_3 monitoring data base, EPA Region 6 and the State of Texas discussed the possibility of reducing the monitoring timeframe in certain areas in order to conserve resources. 40 CFR 58.13(a)(3) provides that the Regional Administrator may exempt periods or seasons from consecutive hourly

averages for continuous SLAMS analyzers.

EPA Region 6 technical staff reviewed the O_3 data from 1979 through 1987 to determine when the O_3 exceedances have occurred in the past years. The results are as follows:

Region 1: No O_3 monitoring data
Region 2: No O_3 monitoring data
Region 3: June 16–October 12
Region 4: No O_3 monitoring data
Region 5: April 16–October 15
Region 6: May 24 (only exceedance)
Region 7: January 1–December 29
Region 8: April 24–September 30
Region 9: July 22–September 12
Region 10: January 4–December 18
Region 11: January 27–November 16
Region 12: March 1–October 8

Based on the above data, I made the final determination on January 17, 1989, that the Gulf Coast areas (AQCRs 4, 5, 7, 10) as well as the El Paso area (AQCR 11) will remain subject to a year-long O_3 season since O_3 exceedances have occurred in the winter months or are expected to occur due to the climatological similarities of the Gulf Coast area. Additionally, I modified the remaining Regions' (AQCRs 1, 2, 3, 6, 8, 9, 12) O_3 seasons to a 245 day time period of March–October since O_3 exceedances have not occurred or are not expected to occur outside this timeframe in these AQCRs. O_3 monitoring has not been conducted in AQCR 1, 2, and 4, however, we would expect the meteorology to be similiar to the AQCRs that surround these areas and have grouped them accordingly.

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 Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 16, 1989. This action may not be challenged later in proceedings to enforce its requirements (See 307(b)(2)).

Date: April 3, 1989.

Robert E. Layton, Jr.,

Regional Administrator.

List of Subjects in Part 58

Air pollution control, Intergovernmental relations.

PART 58—[AMENDED]

Title 40, Part 58 of the Code of Federal Regulations is being amended as follows:

1. The authority citation for Part 58 continues to read as follows:

Authority: 42 U.S.C. 7410, 7601(a), 7613, 7619.

Appendix D—[Amended]

2. In Appendix D, in the table in § 2.5, the current entry for Texas is removed and the following two entries are added in its place:

State			Begin month	End month
•	•	•	•	•
Texas	AQCR 4,5,7,10,11		January	December
Texas	AQCR 1, 2, 3, 6, 8, 9, 12.		March	October
•	•	•	•	•

[FR Doc. 89–8627 Filed 4–14–89; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 81

[FR1-3554-7]

Designation of Areas of Air Quality Planning Purposes; Michigan

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Final rulemaking.

SUMMARY: USEPA is today approving a change to the designation of Midland County, in the State of Michigan, from secondary nonattainment to attainment for total suspended particulates (TSP). This revision to the Michigan State Implementation Plan (SIP) is based on eight quarters of violation-free data from monitors represntative of worst case concentrations and evidence that the improvements in air quality were due to federally approved or permanent emission reductions.

USEPA revised the particulate matter standard on July 1, 1987, (52 FR 24634) and eliminated the TSP ambient air quality standard. The revised standard is expressed in terms of particulate matter with a nominal diameter of 10 micrometers or less (PM_{10}). However, in keeping with past policy, USEPA will continue to process redesignations of areas from nonattainment to attainment or unclassifiable for TSP, because various regulatory provisions such as nonattainment new source review and Prevention of Significant Deterioration (PSD) are keyed to the attainment status of areas. The July 1, 1987, notice (p. 24682, Column 1) describes USEPA's transition policy regarding TSP redesignations.

DATE: This action is effective June 16, 1989, unless notice is received by May 17, 1989, that someone wishes to submit comments.

ADDRESSES: Copies of the SIP revision are available at the following addresses for review: (It is recommended that you telephone Ms. Toni Lesser, at (312) 886–6037, before visiting the Region V office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR–26), 230 South Dearborn Street, Chicago, Illinois 60604

Michigan Department of Natural Resources, Air Quality Division, Stevens T. Mason Building, 530 West Allegan, Lansing, Michigan 48909.

Comments on these proposed rules should be addressed to: (Please submit an original and three copies, if possible.) Gary Gulezian, Chief, Regulatory Analysis Section, U.S. Environmental Protection Agency, Air and Radiation Branch (5AR–26), 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Ms. Toni Lesser, Michigan Regulatory Specialist, U.S. Environmental Protection Agency, Air and Radiation Branch (5AR–26), 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886–6037.

SUPPLEMENTARY INFORMATION: On March 3, 1978 (43 FR 8962), and October 5, 1978 (43 FR 45993) under section 107(d) of the Clean Air Act, the Administrator promulgated a listing of the attainment status of each area of every State with respect to the National Ambient Air Quality Standards (NAAQS). USEPA designated a 12 square-mile region of Midland, Michigan, as nonattainment of the secondary NAAQS for TSP (R2E, T14N, Sections 14–16, 21–23, 26–28, and 33–35). This decision was based on exceedances of the NAAQS during the previous year. The source population of industrial particulates in Midland County during this period was relatively uncontrolled. Since then a federally approved control strategy has been implemented.

On March 1, 1988, the Michigan Department of Natural Resources (MDNR) requested that USEPA redesignate to attainment for TSP that portion of Midland County, Michigan, which is currently designated secondary nonattainment for TSP. MDNR submitted a report entitled, "Technical Support Document for the TSP Redesignation of Midland, Michigan, to Attainment," February 1988. In addition, the State submitted eight quarters of violation-free data from monitors representative of worst case concentrations and evidence that the improvements in air quality were due to federally approved or permanent emission reductions.

Criteria for Redesignation Requests

USEPA's general criteria for redesignation approval requires the following elements:

(1) Submission of eight consecutive quarters of the most recent, quality-assured ambient air quality data which reveal no violations of the TSP NAAQS. The monitors indicating attainment must be placed at the points of expected maximum TSP impact, and the monitoring network must be extensive enough to produce fully representative data. If monitoring data are not representative of the impact of a major source on air quality, dispersion modeling must be used to determine the full impact of the source.

(2) Implementation of an EPA-approved control strategy. The improvement in monitored readings since the year the area was designated nonattainment must be attributable to enforceable emission reductions approved and implemented since that year.

(3) It must be proven that emission reductions and the improvement in air quality are not temporary or merely the result of economic downturn. It must be shown that it is highly unlikely that emission rates will increase significantly at units operating below their allowable emission rates. It must also be shown that it is highly unlikely that production levels will increase significantly.

(4) It must be proven that dispersion techniques are not responsible for the improvement in air quality. Sources in the nonattainment area should be reviewed in light of the revised Section 123 regulations published on July 8, 1985.

USEPA's revised particulate standard of July 1, 1987, contained a transition policy with respect to TSP redesignations. According to USEPA's transition policy, TSP redesignation requests will be reviewed for compliance with USEPA's redesignation policy issued in the memoranda from the Director of the Office of Air Qualtity Planning and Standards (OAQPS) on April 21, 1983, and September 30, 1985. USEPA's policy consists of the four criteria discussed above, which demonstrate the reason why the air quality has improved and the reason why the air quality improvement will continue in the future.

Analysis of Midland County Redesignation Request

1. Violation-Free Monitoring Data

MDNR submitted ambient monitoring data for five sites which had operated in 1985 and 1986 to meet USEPA's requirement of eight consecutive quarters of the most recent air quality data, with no violations of the TSP NAAQS. A map showing industrial sources, monitor locations, and the nonattainment boundaries provided evidence that monitors were placed at the points of expected maximum TSP impact. Three sites were operated by the MDNR, and two sites by Dow Chemical, USA.

In addition, MDNR provided a table of the highest second high concentrations of all the monitors from 1976 through 1986. USEPA supplemented this information with Storage and Retrieval of Aerometric Data (SAROAD) 1987 monitoring results. The most recent violation of the former secondary TSP standard occurred in 1985 at the SAROAD Site number 23-3480-004-F01 when the TSP values twice exceeded 150 $\mu g/m^3$. MDNR considers the exceedance of 371 $\mu g/m^3$ which occurred on May 31, 1985, to be the result of an exceptional event. The document entitled, "Guideline on the Identification and Use of Air Quality Data Affected by Exceptional Events" (EPA-450/4-86-007), details USEPA's policy on exceptional events. As stated in this guideline, high winds combined with a significant contribution of crustal material can be an exceptional event. USEPA believes that the elevated TSP monitored values on May 31, 1985, were due to an exceptional event, because MDNR has shown that the high winds were present on that day, and that the majority of the TSP was crustal.

2. Implementation of USEPA-Approved Control Strategy

The USEPA-approved control strategy (i.e., SIP) must have been implemented. The improvement in monitored readings for TSP (since the base year used for the nonattainment designation) must be attributable to enforceable or permanent emission reductions implemented since that year. In this case, Michigan demonstrated that the improvement in air quality resulted from: (1) The permanent shutdown of the Westside Powerhouse at Dow; (2) the installation of a baghouse at the Southside Powerside, (3) the installation of an electrostatic precipitator at the Dow incinerators, (4) the permanent shutdown of the Hicks Company, and (5) the permanent shutdown of the Martin Marietta plant. The net reduction in emissions between the 1977 actual emissions and the 1985 allowable emissions was 3930 tons per year (TPY). Because these reductions have been cited by Michigan as necessary to achieve attainment, these reductions cannot be used for netting in any Prevention of Significant Deterioration applications.

3. Permanent Emission Reductions

Emission reductions and improvement in air qualtity must not be temporary or merely the result of an economic downturn. It must be shown that it is unlikely that emission rates will increase significantly at units operating below their allowable emission rates (e.g., because economic, technological or regulatory factors would prevent such increases). It must also be shown that production levels are not likely to increase significantly.

Michigan made such a showing by documenting that current allowable TSP emissions in Midland are approximately 4000 TPY less than the 1977 actual emissions. The major emission reductions were either permanent, with the sources removed from the emission inventory, or federally enforceable as the result of actions necessary to comply with the SIP.

4. Dispersion Techniques

Dispersion techniques, which are not creditable according to the revised Section 123, Clean Air Act regulations (50 FR 27892), cannot be responsible for the improvement in air quality. MDNR reviewed the Midland sources for dispersion techniques as part of a statewide effort. The study verified that particulate and SO_2 sources do not employ greater than Good Engineering Practices (GEP) stack heights. USEPA believes that improvement of air quality in Midland County was due primarily to the installation of the baghouse at the Dow Chemical Southside Powerhouse which reduced emissions by approximately 2900 tons per year. Overall maximum concentrations decreased 99.52 percent as a result of the baghouse, merging, and raising the stack height to 81 meters. At Dow, the increase in stack height was originally grandfathered as a "within formula" increase prior to October 11, 1983. Thus, a demonstration was not required.

Current USEPA Policy states that requests for redesignation of areas from nonattainment to attainment which are affected by any of the remanded provisions of the stack height regulations will be put on hold until USEPA has completed relemaking necessary to comply with the court's remand. (Memorandum from J. Craig Potter, Assistant Administrator for Air and Radiation, to the Regional Air Division Directors, entitled "Interim Policy on Stack Height Regulatory Actions," April 22, 1988.)

The State of Michigan showed that the stack changes affected by the remand resulted in only a small

contribution to the overall improvement in air quality in Midland County. According to air quality modeling, the increase in stack height from 65 meters to 81 meters only decreased ambient concentrations by 0.02 percent. USEPA believes that the redesignation is still approvable without crediting this improvement.

Regulatory Action

USEPA is today approving the redesignation of Midland, Michigan, to attainment for TSP. The State has provided eight quarters of violation-free data from monitors representative of worst case concentrations and evidence that the improvements in air quality were due to federally approved or permanent emission reductions.

USEPA believes today's action to be noncontroversial and routine. Therefore, it is being approved without prior proposal. This action will become effective June 16, 1989. However, if we receive notice by May 17, 1989, that someone wishes to submit comments, then USEPA will publish: (1) A notice that withdraws the action, and (2) a notice that begins a new rulemaking by proposing the action and establishing a comment period.

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

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

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 June 16, 1989. 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 81

Air pollution control, Total suspended particulates, Intergovernmental relations.

Date: March 23, 1989.

Valdas V. Adamkus,

Regional Administrator.

Designation of Areas for Air Quality Planning Purposes—Michigan

Part 81 of Chapter 1, Title 40 of the Code of Federal Regulations is amended as follow:

PART 81—[AMENDED]

1. The entry "AQCR 122" of the TSP Table in § 81.323 is amended by removing "Midland County" and by renumbering the remainder of the entry to read as follows:

§ 81.323 Michigan.

MICHIGAN—TSP

Designated area	Do not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
AQCR 122-Except subareas defined				X
1. Bay County:				
R5E, T14N, Sections 14–16, 21–23		X		
2. Genesee County:				
Starting on Industrial Ave., north to Pierson Rd., east to Dort Highway, south to Hitchcock St., south to Olive Ave. (extended), south to Robert T. Longway Boulevard, west and southwest to Industrial Ave.		X		
3. Muskegon County:				
R16W, T9N, Sections 5 and 6, R16W, T10N, Sections 21, 22 and 27–34		X		
4. Saginaw County:				
a. Northeast Section:				
Starting on Tittabawassee Rd., east to I–75, south to Wadsworth Ave., west to I–675, west and north to Tittabawassee Rd.		X		
b. Southwest Section				
T12N–R4E, the eastern half of Section 34 (that which is east of Maple St.) and Section 35.		X		

* * * * * * *

[FR Doc. 89–8995 Filed 4–14–89; 8:45 am]
BILLING CODE 6560–50–M

40 CFR Parts 141 and 142

[WH–FRL–3555–6]

Drinking Water Regulations; Public Notification

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical amendment.

SUMMARY: EPA is issuing this technical amendment to correct errors in the final rule amending the public notification requirements for public water systems which fail to comply with certain requirements of the National Primary Drinking Water Standards (NPDWRs) promulgated pursuant to the Safe Drinking Water Act and public water systems that have a variance or exemption from a NPDWR requirement. This final regulation was published in the Federal Register on October 28, 1987 (52 FR 41534).

EFFECTIVE DATE: These amendments are effective April 17, 1989.

FOR FURTHER INFORMATION CONTACT: Ralph Langemeier, Chief, Drinking Water Branch, Water Management Division, Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, telephone (913) 236–2815; or Carl Reeverts, Deputy Director, State Programs Division, Office of Drinking Water, WH–550E, 401 M Street, SW., Washington, DC 20460, telephone (202) 382–5522.

SUPPLEMENTARY INFORMATION: On October 28, 1987, EPA amended 40 CFR § 141.32 which specifies public notification requirements for public water systems that violated certain requirements of NPDWRs or have a variance or exemption from an NPDWR requirement. Certain errors in the amended public notification requirements in § 141.32 have come to light. This notice amends the regulation to correct these errors.

Note: The October 28, 1987 notice also promulgated new public notification requirements regarding lead contamination of drinking water in 40 CFR § 141.34, and amended the public notification requirements for exceedances of the National Secondary Drinking Water Regulation for fluoride in 40 CFR § 143.5 and the State implementation regulations in 40 CFR Part 142, Subpart B.

Today's amendments do not affect these other provisions.

The first error concerns use of hand delivery or posting in lieu of electronic media notification to notify the public of "acute" violations, as defined elsewhere in the public notification rule. Specifically, in § 141.32(a)(3)(ii), it states that "[I]n lieu of the requirements of paragraphs (a) (1) and (2) * * * a non-community water system may give notice within 14 days after the violation or failure by hand delivery or by continuous posting * * *." Paragraph (a)(1) sets out the method and timing for initial public notification of "Tier 1" violations (which include maximum contaminant level, treatment technique, and variance and exemption schedule violations, some of which may be acute); paragraph (a)(2) sets out the repeat notice requirements for these violations. Paragraph (a)(3)(ii) allow alternative methods of notice, i.e., hand delivery and posting, for non-community water systems. Inadvertently, this paragraph does not address the timing of initial notification for acute violations. EPA intended the timing to be the same for each type of violation, regardless of the notification method used (i.e., initial notice of Tier 1 violations within 14 days, unless the violation is acute, in which case, public notice must take place within 72 hours). This notice amends paragraph (a)(3)(ii) to add the timing requirements for acute violations so it is clear that the timing requirements are the same for all methods of notification.

Paragraph (a)(3)(i) sets out the public notification requirements for systems in areas not served by a daily or weekly newspaper of general circulation (they must substitute hand delivery or posting for newspaper notice). This paragraph specifies both the initial and repeat notice requirements; thus, it operates in lieu of the repeat notice requirements of paragraph (a)(2), as well as the initial notice requirements of paragraph (a)(1). Today's notice makes this clear by amending the citation in paragraph (a)(3)(i).

Paragraph (a)(3)(i) also discusses the timing of initial public notice for Tier 1 violations without addressing acute violations. Thus, this notice makes the same correction described above for paragraph (a)(3)(ii) to make it clear that the timing of initial public notices is the same, regardless of the method used.

The preamble to the final public notification rule summarized the rule's requirements in Table 2. Today's notice contains a revised table that takes into account the clarification and corrections described above.

This notice also corrects two citations in Part 142 and removes the words "by establishing" which were inadvertently included in § 142.16(a)(2).

Dated: April 6, 1989.

Rebecca W. Hanmer,

Acting Assistant Administrator for Water.

For the reasons set forth in the preamble, the following corrections are made to the Drinking Water Regulations; Public Notification, published in the **Federal Register** on October 28, 1987 (52 FR 41534).

1. In the preamble, on page 41542, the chart is corrected to read as follows:

BILLING CODE 6560-50-M

Table 2—Summary of the Final Public Notification Requirements

Violation Category Type	Mandatory Health Effects Information Required (All PWS)	Notice to New Billing Units (CWS Only)	Type of PWS	Time Frame Within Which Notice Must be Given (Box indicates time frame for initial notice, and is followed by the frequency of repeat notice)
				Violation: 72 hours; 7 days; 14 days; 45 days; 3 months; Annual
TIER 1			Community	Acute Violations:
1. MCL	Yes	Yes		Elec. Media — No Repeat
2. Treatment Technique	Yes	Yes		Newspaper[1] — No Repeat
3. Variance or Exemption Schedule Violation	Yes	Yes		Mail or Hand Delivery[2] — Quarterly Repeat
				Non-Acute Violations:
				Newspaper[1] — No Repeat
				Mail or Hand Delivery[2] — Quarterly Repeat
			Non-Community[3]	Option 1: **Notice as for Community Water Systems** or Option 2: Acute Violations: Posting or Hand Delivery — Continuous/Quarterly Repeat
				Non-Acute Violations: Posting or Hand Delivery — Continuous/Quarterly Repeat
TIER 2			Community	Newspaper[1] — Quarterly Repeat by Mail or Hand Delivery
1. Monitoring[4]	No	No		
2. Testing Procedure	No	No	Non-Community[3]	Option 1: **Notice as for Community Water Systems** or Option 2: Posting or Hand Delivery — Continuous/Quarterly Repeat
3. Variance or Exemption Issued	Yes	No		

Footnotes

[1] If no newspaper of general circulation is available, posting or hand delivery is required as specified in §141.32(a)(3)(i) and §141.32(b)(3)(i).
[2] May be waived in accordance with §141.32(a)(1)(ii).
[3] Includes both transient non-community public water systems and non-transient non-community public water systems.
[4] Less frequent notice (but no less than annual) to be required as in §142.16(a).

BILLING CODE 6560-50-C

PART 141—[AMENDED]

2. In Part 141:

a. The authority citation for Part 141 continues to read as follows:

Authority: 42 U.S.C. 300g–1, 300g–3, 300g–6, 300j–4, and 3f00j–9.

b. Section 141.32 is amended by revising paragraph (a)(3) (i) and (ii) to read as follows:

§ 141.32 Public notification.

* * * * *

(a) * * *

(3)(i) In lieu of the requirements of paragraphs (a) (1) and (2) of this section, the owner or operator of a community water system in an area that is not served by a daily or weekly newspaper of general circulation must give notice by hand delivery or by continuous posting in conspicuous places within the area served by the system. Notice by hand delivery or posting must begin as soon as possible, but no later than 72 hours after the violation or failure for acute violations (as defined in paragraph (a)(1)(iii) of this section), or 14 days after the violation or failure (for any other violation). Posting must continue for as long as the violation or failure exists. Notice by hand delivery must be repeated at least every three months for as long as the violation or failure exists.

(ii) In lieu of the requirements of paragraphs (a) (1) and (2) of this section, the owner or operator of a non-community water system may give notice by hand delivery or by continuous posting in conspicuous places within the area served by the system. Notice by hand delivery or posting must begin as soon as possible, but no later than 72 hours after the violation or failure for acute violations (as defined in paragraph (a)(1)((iii) of this section), or 14 days after the violation or failure (for any other violation). Posting must continue for as long as the violation or failure exists. Notice by hand delivery must be repeated at least every three months for as long as the violation or failure exists.

* * * * *

PART 142—[AMENDED]

3. In Part 142:

a. The authority citation for Part 142 continues to read as follows:

Authority: 42 U.S.C. 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–4, and 300j–9.

b. Section 142.10 is amended by revising paragraph (b)(6)(v) to read as follows:

§ 142.10 Requirements for a determination of primary enforcement responsibility.

* * * * *

(b) * * *

(6) * * *

(v) Authority to require public water systems to give public notice that is no less stringent than the EPA requirements in §§ 141.32 and 142.16(a).

* * * * *

c. Section 142.16 is revised to read as follows:

§ 142.16 Special primacy requirements.

(a) *State public notification requirements.* If a State exercises the option specified in § 141.32(b)(4) to authorize less frequent notice for minor monitoring violations, it must adopt a program revision enforceable under State authorities which promulgates rules specifying either: (1) Which monitoring violations are minor and the frequency of public notification for such violations; or (2) criteria for determining which monitoring violations are minor and the frequency of public notification.

(b) [reserved]

[FR Doc. 89–9122 Filed 4–14–89; 8:45 am]
BILLING CODE 6560–50–M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

41 CFR Part 51–7

Public Availability of Agency Materials

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Final rule.

SUMMARY: The Committee has revised its regulations to implement the provisions of the Freedom of Information Act of 1986.

EFFECTIVE DATE: May 17, 1989.

FOR FURTHER INFORMATION CONTACT: Beverly L. Milkman, Executive Director (703) 557–1145.

SUPPLEMENTARY INFORMATION: On October 27, 1986, the President signed the Freedom of Information Reform (FOIA) Act of 1986 (Pub. L. 99–570). This legislation amended the FOIA to provide broader exemption protection for law enforcement information and modified the Act's fee and fee waiver provisions. On January 19, 1988, the Committee published a proposed rule revising its FOIA regulations accordingly. The fee provisions conform to the uniform FOIA fee schedule and guidelines promulgated by OMB, 52 FR 10011–10020 (March 27, 1987). In issuing the fee waiver criteria, policy guidance issued by the Department of Justice on April 2, 1987 was considered. Public comment was invited, with the comment period extending to March 15, 1988. During that period, comments were received from one interest group representing the media. A discussion of their comments follows:

Comment: The Committee should furnish records "promptly" rather than "within a reasonable time" as proposed.

Response: The Committee Regulations at § 51–7.7(c) have been revised to provide the records "as soon as possible."

Comment: The Committee should offer assistance to requesters who do not reasonably describe the information that they request.

Response: § 51–7.2(a) of the Committee's regulations have been revised to include: "Where a request does not reasonably describe the requested information, the requester will be asked to provide more specific information."

Comment: The Committee's proposed business notification procedures would interfere with and regularly prevent the agency from adhering to the 10-day time limit for responding to FOIA requests.

Response: § 51–7.8(a) in part states that in responding to an FOIA request, if the Committee cannot readily determine whether the information is privileged or confidential business information, it will obtain and consider the views of the submitter of the information and provide the submitter at least 10 working days to object to any decision to disclose the information. The Committee believes that business submitters of information should be afforded an opportunity to object to the release of information considered privileged or confidential. Further, taking time extensions for the purpose of consulting with submitters of information is consistent with court decisions and the intent of Executive Order 12600, "Predisclosure Notification Procedures for Confidential Commercial Information," June 1987.

Comment: The Committee should not defer its responsibility for granting or denying requests if another agency has "primary responsibility" for the requested records.

Response: FOIA does not preclude an agency from referring requests for records to the agency which has primary responsibility for the requested records, particularly where the primary agency is in the best position to determine whether records must be disclosed or whether an exemption can and should be asserted. This practice is not unusual among federal agencies.

Comment: The Committee's regulations should indicate that records denied to an FOIA requester will be preserved for the life of the Statute of Limitations regarding those records.

Response: The Committee addresses "Preservation of Records" at § 51–7.16 in its regulations. The Committee will comply with all applicable recordkeeping requirements.

Comment: The Committee in its regulations should eliminate or redefine its definition of "representative of the news media."

Response: The Committee's definition was taken from the OMB fee guidelines which were made final only after a period of public comment during which concerns were raised and considered. The statute specifically mandates that agencies follow OMB guidelines in promulgating their own regulations. The Committee believes that its definition properly implements the statutory terms of the amended Act.

Comment: The Committee should make it easier to obtain fee waivers on requests for information.

Response: The Committee's fee waiver regulations are based on and in compliance with the Department of Justice guidelines issued on April 2, 1987. The Committee has reviewed these guidelines and believes they are in accord with the 1986 fee waiver amendments to FOIA. Special concerns raised by the commenter have been addressed by the Department in its notice of final rulemaking, 52 FR 33230–33231 (September 2, 1987).

Comment: The Committee's regulations violate the Paperwork Reduction Act by requiring FOIA requesters seeking waiver of fees to provide proof of entitlement. The Committee should be able to determine from the initial request whether a fee is justified.

Response: The Committee agrees that, in many instances, the initial request itself may provide sufficient information for the Committee to make a fee waiver determination. However, the Committee recognizes that there will be instances where the initial request does not provide sufficient information. In such cases, the requester should be given an opportunity to provide additional justification. Accordingly, the Committee's regulations have been revised to allow for this circumstance. The Committee believes its fee waiver procedures are in compliance with the Paperwork Reduction Act.

Comment: The Committee's proposed regulations on fee waivers should exclude the news dissemination function from its test to determine the requester's commercial interest.

Response: The Department of Justice in its fee waiver guidelines indicated that news gathering and dissemination by established news media organizations, as a rule, should not be considered to be "primarily" in their commercial interest. However, the Department indicated there are instances such as "the disclosure of agency records to data brokers or others who compile and market Government information for direct economic return which can more readily be considered as primarily in the commercial interests of the requester." The Committee concurs with the Department's statement, that each agency is best situated to make a comparative assessment as to the likely effects of disclosure of its own records.

Comment: The Committee's prepayment requirement interferes with the agency's requirement to provide information promptly, and the media's ability to provide timely dissemination of information.

Response: The Committee believes its prepayment requirement is fair and necessary. Further, both the Act and OMB guidelines specifically provide for prepayment of fees.

Miscellaneous

In the proposed rule as published, the Committee did not include the statutory requirement that extensions of time for responding to a request may be extended for a total of 10 working days, divided between the initial response and the appeal response. The Committee has recognized this oversight and has added conforming language to § 51–7.11. The Committee has also recognized that it did not include the usual and customary 30-day time frame for the submission of appeals to initial denials of records, and it has amended § 51–7.10 accordingly.

List of Subjects in 41 CFR Part 51–7

Freedom of Information.

41 CFR Part 51–7 is revised to read as follows:

PART 51–7 PUBLIC AVAILABILITY OF AGENCY MATERIALS

Sec.

51–7.1 Purpose.
51–7.2 Scope.
51–7.3 Definitions.
51–7.4 Availability of materials.
51–7.5 Requests for records.
51–7.6 Aggregating requests.
51–7.7 Committee response to requests for records.
51–7.8 Business information.
51–7.9 Records of other agencies.
51–7.10 Appeals.
51–7.11 Extensions of time.
51–7.12 Fee schedule.
51–7.13 Fees charged by category of requester.
51–7.14 Fee waivers and reductions.
51–7.15 Collection of fees and charges.
51–7.16 Preservation of records.

Authority: 5 U.S.C. 552.

§ 51–7.1 Purpose.

These regulations implement the provisions of the "Freedom of Information Act," 5 U.S.C. 552. They establish procedures under which the public may inspect and obtain copies of nonexempt material maintained by the Committee, provide for administrative appeal of initial determinations to deny requests for material, and prescribe uniform fees to be charged by the Committee to recover search, review, and duplication costs.

§ 51–7.2 Scope.

(a) These regulations shall apply to all final determinations made by the Committee, including all objections; and to any other Committee records reasonably described and requested by a person in accordance with these regulations—except to the extent that such material is exempt in accordance with paragraph (b) of this section. Where a request does not reasonably describe the requested information, the requester will be asked to provide more specific information.

(b) Requests for inspection and copies shall not be granted with respect to matters that are:

(1) Related to records:

(i) Specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy, and

(ii) In fact properly classified pursuant to such Executive Order;

(2) Related solely to the internal personnel rules and practices of the Committee;

(3) Specifically exempted from disclosure by statute;

(4) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Inter-agency or intra-agency memoranda or letters which would not be available by law to a party other than an agency in litigation with the Committee;

(6) Personnel, medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

(i) Could reasonably be expected to interfere with enforcement proceedings,

(ii) Would deprive a person of a right to a fair trial or an impartial adjudication,

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy,

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution, which furnished information on a confidential basis and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source,

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual;

(8) Contained in or related to examination, operation, or condition of reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(9) Geological and geophysical information and data, including maps concerning wells.

(c) Whenever a request is made which involves access to records described in paragraph (b)(7)(i) of this section and:

(1) The investigation or proceeding involves a possible violation of criminal law; and

(2) There is reason to believe that:

(i) The subject of the investigation or proceeding is not aware of its pendency, and

(ii) Disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings, then the agency may, during only such time as that circumstance continues, treat the records as not subject to the requirements of this section.

(d) Whenever informant records maintained by a criminal law enforcement agency under an informant's name or personal identifier are requested by a third party according to the informant's name or personal identifier, the agency may treat the records as not subject to the requirements of this section unless the informant's status as an informant has been officially confirmed.

(e) Whenever a request is made which involves access to records maintained by the Federal Bureau of Investigation pertaining to foreign intelligence or counterintelligence, or international terrorism, and the existence of the records is classified information as provided in paragraph (b)(1) of this section, the Bureau may, as long as the existence of the records remains classified information, treat the records as not subject to the requirements of this section.

§ 51-7.3 Definitions.

As used in these regulations:

(a) The term "Act" means the Freedom of Information Act (5 U.S.C. 552), as amended.

(b) The term "Committee" means the Committee for Purchase from the Blind and Other Severely Handicapped.

(c) The term "Chairman" means the Chairman of the Committee for Purchase from the Blind and Other Severely Handicapped.

(d) The term "Executive Director" means the Executive Director of the Committee for Purchase from the Blind and Other Severely Handicapped.

(e) The term "exempt materials" means those materials described in § 51-7.2(b).

(f) The term "non-exempt materials" refers to all materials described in § 51-7.2(a), except "exempt materials" included in § 51-7.2(b).

(g) The term "duplication" refers to the process of making a copy of a document necessary to respond to a request. Such copies can take the form of paper copy, audio-visual materials, or machine readable materials (e.g., magnetic tape or disk), among others.

(h) The term "search" includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents.

(i) The term "review" refers to the process of examining documents located in response to a request that is for a commercial use to determine whether any portion of any document located is permitted to be withheld. It also includes processing any documents for disclosure, e.g., doing all that is necessary to excise them and otherwise prepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

§ 51-7.4 Availability of materials.

All non-exempt materials shall be available for inspection during normal business hours at the Committee's offices, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509. Space shall be made available at that location for the use of any person who is granted permission to inspect such materials. An individual who intends to visit the Committee offices in person to inspect non-exempt material shall make an appointment with the Executive Director at least one week in advance, except when the Committee has provided notification that certain records are available for inspection in the Committee offices. An individual who intends to inspect those records shall make an appointment with the Executive Director at least 24 hours in advance.

§ 51-7.5 Requests for records.

(a) Requests to inspect and obtain copies of any material maintained by the Committee must be submitted in writing to the Executive Director, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509. The requester may in his or her petition ask for a fee waiver if there is likely to be a charge for the requested information. All requests for records shall be deemed to have been made pursuant to the FOIA, regardless of whether the Act is specifically mentioned. Failure to submit a request in accordance with these procedures may delay the processing of the request.

(b) A request must reasonably describe the records to enable agency personnel to locate them with reasonable effort. Where possible, a requester should supply specific information regarding dates, titles, and other identification which will help to identify the records.

(c) If the Committee determines that a request does not reasonably describe the records, it shall inform the requester of this fact and extend to the requester an opportunity to clarify the request or to confer promptly with knowledgeable agency personnel to attempt to identify the records he or she is seeking. The "date of receipt" in such instances shall be the date of receipt of the amended or clarified request.

(d) Nothing in this part shall be interpreted to preclude the Committee from honoring an oral request for information, but, if the requester is dissatisfied with the response, the Committee official involved shall advise the requester to submit a written request in accordance with paragraph (a) of this section. The "date of receipt" of such a request shall be the date of receipt of the written request. For recordkeeping purposes, the Committee in responding to an oral request for information may

ask the requester to confirm the oral request in writing.

§ 51-7.6 Aggregating requests.

When the Committee reasonably believes that a requester, or a group of requesters acting in concert, is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, the Committee may aggregate any such requests and charge accordingly. Elements to be considered in determining whether a belief would be reasonable include the time period in which the requests have occurred and the subject matter involved.

§ 51-7.7 Committee response to requests for records.

(a) An initial determination whether, and to what extent, to grant each request for records or a fee waiver shall be made by the Executive Director within 10 days (excepting Saturdays, Sundays, and legal public holidays) after receipt of that request. The person making the request shall be notified as soon as the determination is made.

(b) In making an initial determination whether and to what extent requested information will be released, the Committee shall first consider whether the material requested is of a type described in § 51-7.2(a); if it is, the request shall be granted unless the material is exempted by § 51-7.2(b). If the material requested is not a type described in § 51-7.2(a), or is the subject of one or more exemptions, the request may be denied.

(c) If a determination is made to grant a request, the relevant material shall be furnished as soon as possible following the determination to grant the request, and after payment of the fee specified in § 51-7.12 when required, except that copies of less than 10 pages of material requested in person ordinarily will be furnished immediately following the determination to grant the request.

(d) Where portions of the requested material are exempt under § 51-7.2(b), and are reasonably segregable from the remainder of the material, those portions shall be excised from the materials disclosed.

(e) If a determination is made to deny a request, or a portion thereof, the notification shall include a statement of the reasons for such action, shall set forth the name and position of the person responsible for the denial, and shall advise the requester of the right, and the procedures required under § 51-7.10 to appeal the denial to the Chairman.

(f) The Committee will require prepayment of fees for search, review, and reproduction which are likely to exceed $250.00. When the anticipated total fee exceeds $250.00, the requester will receive notice to prepay and at the same time will be given an opportunity to modify his or her request to reduce the fee. The Committee will also inform the requester that fees for search time will be charged even if the search proves unsuccessful. The Committee will not start processing a request until payment is received.

(g) Whenever duplication fees or search fees are anticipated to exceed $25.00, but not more than $250.00 and the requester has not indicated, in advance, a willingness to pay fees as high as those anticipated, the Committee will notify the requester of the amount of the anticipated fee. Similarly, where an extensive and therefore costly successful search is anticipated, the Committee will notify requesters of the anticipated fees. The Committee will not start processing the request until assurance of payment is received.

(h) Photocopies and directives furnished to the public are restricted to one copy of each page.

§ 51-7.8 Business information.

(a) When, in responding to an FOIA request, the Committee cannot readily determine whether the information obtained from a person is privileged or confidential business information or when a submitter has labeled information as proprietary at the time of submission, it shall:

(1) Obtain and consider the views of the submitter of the information and provide the submitter at least 10 working days to object to any decision to disclose the information and to provide reasons for the objection;

(2) Provide business information submitters with notice of any determination to disclose such records, to which the submitter has objected to disclosure, 10 working days prior to the disclosure date, and the reasons for which its disclosure objection is not sustained;

(3) Notify business information submitters promptly of all instances in which FOIA requesters are bringing suit seeking to compel disclosure of submitted information.

(b) The submitter, in responding to a request under paragraph (a)(1) of this section, must explain fully all grounds upon which disclosure is opposed. For example, if the submitter maintains that disclosure is likely to cause substantial harm to its competitive position, the submitter must explain how disclosure would cause such harm.

(c) When a central nonprofit agency has submitted business information on behalf of a workshop, the workshop shall be considered to be the "business information submitter" for the purposes of this section.

§ 51-7.9 Records of other agencies.

(a) When the Committee receives a request to make available current records that are the primary responsibility of another agency, the Committee will refer the request to the agency concerned for appropriate action.

(b) The Committee will notify the requestor of the referral in paragraph (a) of this section and include the name and address of the office to which the request was referred.

§ 51-7.10 Appeals.

(a) An appeal to the Chairman of any denial, in whole or in part, of a request for access to and copies of material may be made by submission of a written request for reconsideration. Such requests shall state the specific reasons for reconsideration that address directly the grounds upon which the denial was based. Requests must be addressed to the Chairman at the Committee offices and must be received within 30 calendar days of the requester's receipt of the Committee's initial denial.

(b) The Chairman shall make a determination with respect to any appeal within 20 days (excepting Saturdays, Sundays, and legal public holidays) after receipt of the request for reconsideration. The person making such a request shall immediately be notified by mail of the determination.

(c) If the initial denial is reversed by the Chairman, any material with which the reversal is concerned shall be made available in accordance with § 51-7.7(b).

(d) If the denial is upheld, in whole or in part, the Chairman shall include in the notification a statement of the requester's right of judicial review under 5 U.S.C. 552(a)(4), and the name and position of the person responsible for the denial.

§ 51-7.11 Extensions of time.

(a) Whenever unusual circumstances exist, such as those set forth in paragraph (b) of this section, the times within which determinations must be made by the Executive Director on requests for access (10 working days), and by the Chairman on requests for reconsideration (20 working days), may be extended by written notice to the requester for a time not to exceed an aggregate of 30 working days. The notice shall set forth the reasons for such extension, and the date on which a determination is expected to be made.

Extensions of time shall be utilized only to the extent reasonably necessary to the proper processing of the particular request.

(b) As used in this section, "unusual circumstances" may mean:

(1) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are the subject of a single request;

(2) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request; or

(3) The need to obtain and consider the views of a business information submitter under § 51–7.8.

§ 51–7.12 Fee schedule.

(a) This schedule sets forth fees to be charged for processing requests for records under the FOIA. No higher fees or charges in addition to those provided for in this schedule may be charged a party requesting records under FOIA.

(b) Subject to the criteria set forth in § 51–7.13, fees may be assessed under FOIA on all requests involving document search, duplication, and review. Fees may also be charged in situations involving special service to requests, such as certifying that records requested are true copies, or sending records by special methods such as express mail, etc.

(c) Instances in which fees may not be charged are as follows:

(1) No charge shall be made for the first 100 pages of duplicated information (8½"x14" or smaller-size paper), or the first two hours of manual search time, or the first two minutes of computer search time, except on requests seeking documents for a commercial use, as specified in § 51–7.13;

(2) Also, no charge shall be made—even to commercial use requesters—if the cost of collecting a fee would be equal to or greater than the fee itself;

(3) In addition, fees shall not be charged for time spent by an agency employee in resolving legal or policy issues, or in monitoring a requester's inspection of agency records;

(4) Documents shall also be furnished without charge when members of the public provide their own copying equipment, in which case no copying fee will be charged (although search and review fees may still be assessed).

(d) Fees for records and related services are as follows:

(1) The fee for photocopies of pages 8½"x14" or smaller shall be $0.20 for each page;

(2) The fee for photocopies larger than 8½"x14" shall be $0.50 per linear foot of the longest side of the copy;

(3) The fee for other forms of duplicated information, such as microfilm, audio-visual materials, or machine-readable documentation (i.e., magnetic tape or disk) shall be the actual direct cost of producing the document(s);

(4) Manual searches shall be charged at the salary rate of the employee conducting the search, plus 16 percent of the employee's basic pay.

(e) Computer searches and services shall be charged at the rate of $22.00 per minute. The $22.00-per-minute rate includes the cost of operating the central processing unit (CPU), and the computer operator's salary. When the services of a computer programmer or a computer program analyst are required in connection with an FOIA request, the fee for those services shall be $16.00 and $20.00 per hour, respectively.

(f) Charges for unsuccessful searches, or searches which fail to locate records or which locate records which are exempt from disclosure, shall be assessed at the same fee rate as searches which result in disclosure of records.

(g) The fee for providing review services shall be the hourly salary rate (i.e., basic pay plus 16 percent) of the employee conducting the review to determine whether any information is exempt from mandatory disclosure.

§ 51–7.13 Fees charged by category of requester.

(a) Under the FOIA, as amended, there are four categories of FOIA requesters: Commercial use requesters; educational and non-commercial scientific institutions; representatives of the news media; and all other requesters. The Act prescribes specific levels of fees for each category.

(b) Commercial use requesters. For commercial use requesters, the Committee shall assess charges which recover the full direct costs of searching for, reviewing for release, and duplicating the records sought. Commercial use requesters are not entitled to two hours of free search time nor 100 free pages of reproduction of documents referenced in § 51–7.12(c)(1). The Committee may charge for the cost of searching for and reviewing records for commercial use requesters even if there is ultimately no disclosure of records.

(1) A commercial use requester is defined as one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made.

(2) In determining whether a requester properly belongs in this category the Committee must determine whether the requester will put the documents to a commercial use. Where the Committee has reasonable cause to doubt the use to which a requester will put the records sought, or where that use is not clear from the request itself, the Committee may seek additional clarification from the requester.

(c) Educational and non-commercial scientific institution requesters. Fees for this category of requesters shall be limited to the cost of providing duplication service alone, minus the charge for the first 100 reproduced pages. No charge shall be made for search or review services. To qualify for this category, requesters must show that the request is being made as authorized by and under the auspices of an eligible institution and that the records are not sought for a commercial use, but are sought in furtherance of scholarly research (if the request is from a non-commercial scientific institution).

(1) The term "educational institution" refers to a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

(2) The term "non-commercial scientific institution" refers to an institution that is not operated on a "commercial" basis, and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(d) Requesters who are representatives of the news media—Fees for this category of requesters shall also be limited to the cost of providing duplication service alone, minus the charge for the first 100 reproduced pages. No charge shall be made for providing search for review services. Requests in this category must not be made for a commercial use.

(1) The term "representative of the news media" refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public.

(2) The term "news" means information that is about current events or that would be of current interest to the public.

(3) Examples of news media entities include television or radio stations broadcasting to the public at large, and

publishers of periodicals which disseminate news and who make their products available for purchase or subscription by the general public.

(4) "Freelance" journalists may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it.

(e) All other requesters. Fees for requesters who do not fit into any of the above categories shall be assessed for the full reasonable direct cost of searching for and duplicating documents that are responsive to a request, except that the first 100 pages of reproduction and the first two hours of search time shall be furnished without charge.

§ 51-7.14 Fee waivers and reductions.

The Committee will waive or reduce fees on requests for information if disclosure of the information is deemed to be in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government, and is not primarily in the commercial interest of the requester.

(a) In determining when fees shall be waived or reduced, the Committee will consider the following six factors:

(1) The subject of the request, i.e., whether the subject of the requested records concerns "the operations or activities of the Government;"

(2) The informative value of the information to be disclosed, i.e., whether the disclosure is "likely to contribute" to an understanding of Government operations or activities;

(3) The contribution to an understanding of the subject by the general public likely to result from disclosure, i.e., whether disclosure of the requested information will contribute to "public understanding";

(4) The significance of the contribution to public understanding, i.e., whether the disclosure is likely to contribute "significantly" to public understanding of Government operations or activities;

(5) The existence and magnitude of a commercial interest, i.e., whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so,

(6) The primary interest in disclosure, i.e., whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is "primarily in the commercial interest of the requester."

(b) The Committee may waive or reduce fees associated with a request for disclosure regardless of whether a waiver or reduction has been requested if the Committee determines that disclosure will primarily benefit the general public.

(c) Fees shall be waived, however, without discretion in all circumstances where the amount of the fee is $20.00 or less.

§ 51-7.15 Collection of fees and charges.

(a) Except when prepayment is required, payments shall be collected to the fullest extent possible at the time the requested materials are furnished. Payments shall be made by requesters within 30 days of the date of the billing.

(b) Payments shall be made by check, draft, or money order made payable to the Treasury of the United States.

(c) In instances where a requester has previously failed to pay a fee, the Committee may require the requester to pay the full amount owed, plus any applicable interest as provided below, as well as the full estimated fee associated with any new request before it begins to process the new or subsequent request.

(d) On requests that result in fees being assessed, interest will be charged on an unpaid bill starting on the 31st day following the day on which the billing was sent. Interest will be at the rate prescribed in section 3717 of Title 31 United States Code, and will accrue from the date of the billing.

(e) In attempting to collect fees levied under FOIA, the Committee will abide by the provisions of the Debt Collection Act of 1982 (Pub. L. 97-365) in disclosing information to consumer reporting agencies and in the use of collection agencies, where appropriate, to encourage payment.

§ 51-7.16 Preservation of records.

The Committee shall preserve all correspondence relating to the requests it receives under this part, and all records processed pursuant to such requests, until such time as the destruction of such correspondence and records is authorized pursuant to Title 44 United States Code, and to the General Records Schedule. Records shall not be destroyed while they are the subject of a pending request, appeal, or lawsuit under the Act.

Beverly L. Milkman,

Executive Drector.

[FR Doc. 89-9034 Filed 4-14-89; 8:45 am]

BILLING CODE 6820-33-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0 and 19

[FCC 89-102]

Establishment of the Office of Inspector General and Internal Control and Security Office

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The FCC is creating an Office of Inspector General (OIG) in conformance with the Inspector General Act Amendments of 1988. The Commission is also transferring all audit and many investigatory functions from the Internal Review and Security Division (IRSD), Office of the Managing Director, to the new OIG in conformance with this law. To reflect this change in functions, IRSD is renamed the Internal Control and Security Office, but continues to report to the Managing Director.

EFFECTIVE DATE: April 17, 1989.

FOR FURTHER INFORMATION CONTACT: Brent Weingardt or Eileen Savell, Office of the Managing Director, 202-632-3906.

SUPPLEMENTARY INFORMATION: This is the complete text of the Commission's *Order* (FCC 89-102), Adopted March 29, 1989 and Released April 12, 1989.

1. By this action, the Commission amends its rules to reorganize the Internal Review and Security Division within the Office of Managing Director into two distinct organizations: an independent Office of Inspector General reporting directly to the Chairman and the Internal Control and Security Office, which will be under the supervision of the Managing Director.

2. On October 18, 1988, the President signed into law the Inspector General Act Amendments of 1988. Pub. L. No. 100-504, 102 Stat. 2515 (1988). This law amends the Inspector General Act of 1978 [1] to require 33 designated federal entities to create an Office of Inspector General (OIG) as they now exist in many Executive Branch departments. Section 104 of the Act defines the Federal Communications Commission as one of the designated federal entities that must establish and maintain an Office of Inspector General not later than 180 days after the enactment of the law.

3. The reasons for the creation of an Office of Inspector General are set out in the Inspector General Acts. First, the

[1] 5 U.S.C. Appendix 3.

OIG will conduct and supervise audits and investigations relating to the programs and operations of the agency. Second, it will provide leadership and coordination and recommend policies for activities designed to promote economy, efficiency and effectiveness, as well as to prevent and detect fraud and abuse in the programs of the agency. Finally, the Office of Inspector General will provide a means for keeping the head of the agency, Commissioners and the Congress fully and currently informed about problems and deficiences at the agency.[2]

4. The Inspector General is appointed by the Chairman with the approval of the Commissioners and operates under the Chairman's general supervision. However, the Chairman may not prevent nor prohibit the Inspector General from initiating or completing any audit or investigation, or from issuing any subpoena. Should an Inspector General be removed or transferred to another office, the Chairman must communicate the reasons for the action in writing to Congress.[3]

5. This reorganization entails the transfer of all audit and many investigative functions from the Internal Review and Security Division (IRSD) to the new Office of Inspector General. To reflect these modified functions, IRSD will be renamed the Internal Control and Security Office (ICSO), but will continue to report to the Managing Director. The ICSO will continue to coordinate the Commission's Freedom of Information Act program; provide *ex parte* coordination; oversee employee ethics and financial disclosure; operate the personnel clearance and security program; maintain building and document security; and conduct Part 19 employee misconduct investigations in which the Inspector General chooses not to participate. In addition, ICSO will be responsible for the Commission's internal control and vulnerability assessment program.

6. Because these amendments address only matters of internal agency organization and procedure, compliance with the notice and comment procedure of the Administrative Procedure Act is not required. 5 U.S.C. 553(b)(1)(A).

Since a general notice of proposed rulemaking is not required, the Regulatory Flexibility Act, 5 U.S.C. 603 and 604, does not apply.

[2] 5 U.S.C. App. 3, section 2, as amended, Pub. L. No. 100-504, section 101. "The IGs are intended to act as independent factgatherers, with no vested interest in policy, or in particular programs and operations." H.R. Rep. No. 1020, 100th Cong., 2nd Sess. 28 (1988) *reprinted in* 1988 *U.S. Code Cong. & Ad. News* 3154, 3187.

[3] Pub. L. No. 100-504, § 104.

7. Accordingly, *it is hereby ordered* That, pursuant to the authority contained in Sections 4(i) and 5(b) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 155(b), and section 104 of Public Law Number 100-504, the Inspector General Act Amendments of 1988, Parts 0 and 19 of the Commission's rules ARE AMENDED as set forth below. These rules are effective upon publication in the **Federal Register.** *See* 5 U.S.C. 553(d).

List of Subjects

47 CFR Part 0

Organization and functions.

47 CFR Part 19

Conflict of interests.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Rule Changes

For the reasons set out in the preamble, Title 47, Parts 0 and 19 of the Code of Federal Regulations is amended to read as follows:

PART 0—COMMISSION ORGANIZATION

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

Authority: Sec. 4, 303, Stat. 1066, 1082 as amended; 47 U.S.C. 154, 303 unless otherwise noted. Implement 5 U.S.C. 552, unless otherwise noted.

2. Section 0.5 is amended by revising paragraph (a) in its entirety to read as follows:

§ 0.5 General description of commission organization and operations.

(a) *Principal staff units.* The Commission is assisted in the performance of its responsibilities by its staff, which is divided into the following principal units:

(1) Office of Managing Director.
(2) Office of Engineering and Technology.
(3) Office of General Counsel.
(4) Office of Plans and Policy.
(5) Office of Public Affairs.
(6) Office of Legislative Affairs.
(7) Office of Administrative Law Judges.
(8) Review Board.
(9) Office of Inspector General.
(10) Mass Media Bureau.
(11) Common Carrier Bureau.
(12) Private Radio Bureau.
(13) Field Operations Bureau.

* * * * *

3. Section 0.13, including a new caption, is added to Part 0, subpart A to read as follows:

Office of Inspector General

§ 0.13 Functions of the Office.

The Office of Inspector General is directly responsible to the Chairman as head of the agency. However, the Chairman may not prevent or prohibit the Office of Inspector General from carrying out its duties and responsibilities as mandated by the Inspector General Act Amendments of 1988 (Pub. L. 100-504) and the Inspector General Act of 1978 (5 U.S.C. Appendix 3), as amended. The Office has the following duties and responsibilities.

(a) Provide policy direction for and to conduct, supervise and coordinate audits and investigations relating to the programs and operations of the Federal Communications Commission.

(b) Review existing and proposed legislation and regulations relating to programs and operations of the Commission and to make recommendations in its required semiannual reports to Congress concerning the impact of such legislation or regulations on the economy and efficiency in the administration of these programs and operations, or the prevention and detection of fraud and abuse in such programs and operations.

(c) Recommend policies and conduct or coordinate other activities to promote economy and efficiency in the administration of Commission programs, or detect and prevent fraud and abuse in Commission activities. Coordinate with other governmental agencies and non-governmental entities on these matters.

(d) Keep the Chairman of the Commission—and through him the other Commissioners—and the Congress fully and currently informed concerning fraud and other serious problems, abuses, and deficiencies relating to the administration of Commission programs and operations; recommend corrective action and report on the progress made in implementing such corrective action. In addition to providing the Chairman with the results of completed audits and inspections, the Inspector General shall prepare statutorily required reports, identified as such, to include:

(1) Semiannual reports summarizing activities of the office during the preceding six month period (due to the Chairman by April 30 and October 31);

(2) Special reports specifically identifying any serious or flagrant problems, abuses or deficiencies (due to the Chairman immediately upon discovery of these matters by the Inspector General).

4. The caption preceding former § 0.176, "Network Inquiry Special Staff," is removed.

5. The heading of § 0.387 is revised to read as follows:

§ 0.387 Other National Security and Emergency Preparedness delegations; cross reference.

* * * * *

6. Section 0.231 is amended by revising paragraph (h) to read as follows:

§ 0.231 Authority delegated.

* * * * *

(h) The head of the Internal Control and Security Office, Office of the Managing Director, is delegated authority to act as the "designated agency ethics official" within the meaning of sections 206 and 209 (10) of the Ethics in Government Act of 1978, Pub. L. 95–521, 92 Stat. 1824 (1978).

* * * * *

PART 19—EMPLOYEE RESPONSIBILITIES AND CONDUCT

1. The authority citation for Part 19 continues to read as follows:

Authority: E.O. 11222, 3 CFR 1965 Comp., 5 CFR 735.104, unless otherwise noted.

2. Section 19.735–105 is amended by revising paragraph (a)(1) to read as follows:

§ 19.735–105 Interpretation and advisory service.

(a)(1) The head of the Internal Control and Security Office is designated as the agency's ethics official for purposes of 5 CFR Parts 734 and 737. The General Counsel is designated as legal counselor for the Commission to provide guidance on matters relating to ethical conduct. The General Counsel is to serve as the Commission's designee to the Office of Personnel Management on matters covered by 5 CFR Part 735.

* * * * *

3. Section 19.735–107 is amended by redesignating existing paragraph (c) as paragraph (d) and adding a new paragraph (c) to read as follows:

§ 19.735–107 Disciplinary and other remedial action.

* * * * *

(c) The Inspector General will be promptly notified of all complaints or allegations of employee misconduct. The Inspector General will also be notified of the planned initiation of an investigation under this Part. Such notification shall occur prior to the initiation of the investigation required by paragraph (a) of this section. The Inspector General may choose to conduct the investigation in accordance with these rules. Should the Inspector General choose to conduct the investigation, he will promptly notify the Chairman. The Inspector General will serve as the designated officer and be solely responsible for the investigation. In carrying out this function, the Inspector General may obtain investigative services from other Commission offices, other governmental agencies or non-governmental sources and use any other means available to him in accordance with Pub. L. 100–504 or 5 U.S.C. Appendix 3. The Inspector General will be provided with the results of all investigations in which he chooses not to participate.

* * * * *

4. Section 19.735–410 is revised to read as follows:

§ 19.735–410 Confidentiality of employees' statements.

Each statement of employment and financial interests, and each supplementary statement, shall be held in confidence and shall be retained in the Office of the Managing Director. Each employee charged with reviewing a statement is responsible for maintaining the statements in confidence and shall not allow access to or allow information to be disclosed from a statement except to carry out the purpose of this part or as otherwise required by law. Information from these statements shall not be disclosed except as the Office of Personnel Management or the Chairman may determine for good cause shown.

[FR Doc. 89–8914 Filed 4–14–89; 8:45 am]
BILLING CODE 6712–01–M

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47 CFR Part 73

[FCC 89–36]

Revision of Part 73, Subpart G of the Rules Concerning the Emergency Broadcast System (EBS)

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has determined that Part 73, Subpart G contains a few outdated, unnecessary or unclear provisions concerning the Emergency Broadcast System (EBS). Amendment of these provisions will reduce confusion. Also, in a filing received by the Commission on July 15, 1988, Hammett and Edison, Inc., Consulting Engineers, requested an informal declaratory ruling as to whether or not § 73.932(d) of the rules requires an entry in a station log if the check required by § 73.932(c) reveals no defect in the station's own EBS monitoring receiver equipment. The Commission has moved the language in § 73.932(d)(1) from its present position to § 73.932(c) to make it absolutely clear that an entry in the log is required as originally intended regardless of the reason for failure to receive an Emergency Broadcast System weekly test.

EFFECTIVE DATE: February 15, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT:

Frank Lucia, Management Planning and Program Evaluation Office, (202) 632–3906.

SUPPLEMENTARY INFORMATION: Section 73.912 of the rules is revised to include all radio, television, and cable networks, program suppliers, wire services and common carriers that voluntarily participate in the EBS. Section 73.926(d) of the rules is also updated to recognize that additional radio, satellite, and wire service networks may voluntarily participate in EBS at the state and local levels. The sentence, "Appropriate entries must be made in the station log, indicating reasons why the Weekly Test Transmissions were not received." is moved from § 73.932(d)(1) to § 73.932(c) to make it absolutely clear that an entry in the log is required as originally intended regardless of the reason for failure to receive an Emergency Broadcast System weekly test. Section 73.962 is amended to remove the need for a Commission Order and Public Notice in the **Federal Register** whenever an EBS Closed Circuit Tests is performed. Notification to industry will be in the form of a telegram issued by the Managing Director. The action by the participants is voluntary, and the Order and publication serve no useful purpose other than notification.

List of Subjects in 47 CFR Part 73

Radio broadcasting, Television broadcasting.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Rule Changes

Title 47 of the Code of Federal Regulations, Part 73, is amended as follows:

PART 73—[AMENDED]

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

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

2. Section 73.912 is revised to read as follows:

§ 73.912 Emergency Broadcast System participants.

The following non-government industry entities voluntarily participate in the Emergency Broadcast System (EBS):

(a) *Radio and Television Networks.*

(1) ABC Radio and ABC–TV.

(2) Associated Press Radio (APR).

(3) CBS Radio and CBS–TV.

(4) Mutual Broadcasting System (MBS).

(5) MUZAK.

(6) NBC Radio.

(7) NBC–TV.

(8) National Public Radio (NPR).

(9) Public Broadcasting Service (PBS–TV).

(10) Satellite Music Network.

(11) Transtar.

(12) United Press International Audio (UPIA).

(13) United Stations.

(b) *Cable Networks and Program Suppliers.*

(1) Cable News Network (CNN).

(2) Christian Broadcasting Network (CBN).

(3) Cinemax.

(4) Disney Channel.

(5) Entertainment and Sports Programming Network (ESPN).

(6) Home Box Office (HBO).

(7) Movie Channel.

(8) MTV.

(9) Nashville Network.

(10) Nickelodean.

(11) Showtime.

(12) VH–1.

(13) Weather Channel.

(c) *Wire Services.*

(1) Associated Press (AP).

(2) United Press International (UPI).

(d) *Common Carriers.*

(1) American Telephone and Telegraph (AT&T).

3. Section 73.926 is amended by revising paragraph (d) to read as follows:

§ 73.926 Participation in the Emergency Broadcast System.

* * * * *

(d) Any AM, FM, TV, or Low Power TV broadcast station or cable, satellite, wire or radio network or system may, at the discretion of management, voluntarily participate in the State level and Operational (Local) level EBS in accordance with the provisions of the State EBS Operational Plan. An EBS Authorization is not required.

4. Section 73.932 is amended by revising paragraphs (c) and (d) to read as follows:

§ 73.932 Radio monitoring and Attention Signal transmission requirements.

* * * * *

(c) The licensee has the responsibility to insure that the equipment used for off-the-air signal monitoring and generating the EBS Attention Signal is in functioning condition during all times the station is in operation, and to determine the cause of any failure to receive the Weekly Transmission Tests as described in paragraph (c) of § 73.961. Appropriate entries must be made in the station log, indicating reasons why the Weekly Test Transmissions were not received.

(d) In the event that the equipment for receiving the Attention Signal and emergency programming transmitted by other broadcast stations, or the equipment for generating the Attention Signal becomes defective, the station may operate without the defective equipment pending its repair or replacement for a period not in excess of 60 days without further authority of the Commission, provided that appropriate entries are made in the station log showing the date and the time the equipment was removed and restored to service. Weekly Test Transmissions of the Test Script, without the equipment for generating the Attention Signal, must still be conducted.

5. Section 73.962 is amended by revising paragraph (a) to read as follows:

§ 73.962 Closed Circuit Tests of approved National level interconnecting systems and facilities of the Emergency Broadcast System.

(a) Tests of approved National level interconnecting systems and facilities of non-government entities voluntarily participating in the EBS will be conducted on a random or scheduled basis not more than once a month and not less than once every three months. The time of the test will be selected by both the White House and participating industry personnel in coordination with the FCC. Unless a random Closed Circuit Test has been selected, the FCC will notify the networks, wire services and participating cable systems and common carriers of the selected time window, four working days (holidays excluded) prior to the test.

* * * * *

[FR Doc. 89–9019 Filed 4–14–89; 8:45am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 88–472; RM–6395]

Radio Broadcasting Services; Ackerman & Cleveland, Mississippi

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes FM Channel 300C for Channel 300C1 at Ackerman, Mississippi, in response to a petition filed by French Camp Radio, Inc. and Carol B. Ingram. We shall also modify the license of Station WFCA to specify operation on Channel 300C in lieu of Channel 300C1 in accordance with § 1.420(g) of the Commission's Rules. The coordinates for Channel 300C are 33–25–25 and 89–24–13. To accommodate the substitution at Ackerman, it is necessary to substitute Channel 295A for Channel 299A at Cleveland, Mississippi. Channel 299A was allotted to Cleveland in MM Docket 84–231 and made available for application in Window No. 51. Carol B. Ingram is the applicant for Channel 299A at Cleveland (880301NM) and has filed comments in which she agrees to the substitution of channels, at coordinates 33–46–04 and 90–44–37. In accordance with Commission policy, we will retain the applicant's filing protection for Channel 299A when she amends to specify Channel 295A since the class of channels are equivalent. With this action, this proceeding is terminated.

EFFECTIVE DATE: April 10, 1989.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88–472, adopted February 2, 1989, and released February 24 , 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. In Section 73.202(b), the Table of FM Allotments under Mississippi is amended by removing Channel 300C1 and adding Channel 300C at Ackerman and by removing Channel 299A and adding Channel 295A at Cleveland.

Federal Communications Commission.

Steve Kaminer,

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

[FR Doc. 89-9022 Filed 4-14-89; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 580

[Docket Number 87-09; Notice 4W]

Odometer Disclosure Requirements

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Grant of Petition for Extension of Time (Ohio).

SUMMARY: This is in response to a petition for an extension of time filed by the Ohio Department of Highway Safety (Ohio). Ohio cannot conform its laws and its title documents to meet the requirements of the Truth in Mileage Act and the final rule implementing the Act by April 29, 1989, the effective date of the statutory and regulatory requirements. Therefore, the petition requests that NHTSA grant Ohio an extension of time, until December 31, 1990, to achieve compliance. Because Ohio has made an effort to meet the deadline, sets forth reasons why it has failed to do so, and has included a description of the steps to be taken while the extension is in effect, we have granted Ohio's petition for an extension of time. Ohio has until December 31, 1990 to revise its laws and its title documents to meet the requirements of the Truth in Mileage Act and the final rule.

FOR FURTHER INFORMATION CONTACT: Judith Kaleta, Office of the Chief Counsel, Room 5219, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590 (202-366-1834).

SUPPLEMENTARY INFORMATION:

Background

Section 2(c) of the Truth in Mileage Act of 1986 authorizes the National Highway Traffic Safety Administration (NHTSA) to provide for an extension of time in the event that any State requires additional time beyond April 29, 1989, in revising its laws to meet the requirements of the Motor Vehicle Information and Cost Savings Act and the implementing regulations set forth in 49 CFR Part 580. It provides that, in granting an extension, NHTSA "shall ensure that the State is making reasonable efforts to achieve compliance."

To implement the Truth in Mileage Act and to make some needed changes in the Federal odometer laws, the agency published final rules which provide that a State may file a petition for an extension of time. The petition should discuss the efforts the State has taken to meet the deadline, the reasons why it needs additional time, the length of time desired for extension, and a description of the steps to be taken while the extension is in effect. 53 FR 29464 (1988).

Ohio's Petition

The Ohio Department of Highway Safety (Ohio) submitted a petition for an extension of time. In support of its petition, Ohio states that the Ohio Legislature passed a bill creating the Automated Title Processing Board, to oversee the design and implementation of an automated title processing system. In conjunction with the creation of this system, Ohio has been redesigning its title document. In addition, Ohio explains that it has been drafting legislation to amend the portions of the Ohio Revised Code which pertain to the issuance of certificates of titles to motor vehicles, specifically to implement the new Federal security requirements. For these reasons, Ohio requests that it be granted an extension of time until December 31, 1990.

NHTSA's Response to the Petition

NHTSA finds that Ohio has made reasonable efforts to achieve compliance with the Motor Vehicle Information and Cost Savings Act and the implementing regulations.

Since the enactment of the Truth in Mileage Act and the issuance of the implementing Federal regulations, the Ohio Legislature passed legislation that will lead to the creation of an automated title processing system. This system will help Ohio to meet the requirements of the Truth of Mileage Act. As this system is being implemented, Ohio will continue to redesign its title documents and draft additional legislation to ensure that the title documents are printed by a secure printing process.

In light of Ohio's past and planned actions, we grant Ohio's request for an extension of time until December 31, 1990, to revise its laws and its title documents to meet the Federal criteria.

Authority: 15 U.S.C. 1988 note; delegation of authority at 49 CFR 1.50(f) and 501.8(e).

Issued on April 11, 1989.

Erika Z. Jones,

Chief Counsel, National Highway Traffic Safety Administration.

[FR Doc. 89-9042 Filed 4-12-89; 8:45 am]

BILLING CODE 4910-59-M

49 CFR Part 580

[Docket Number 87-09; Notice 4X]

Odometer Disclosure Requirements

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Grant of Petition for Extension of Time (Wyoming).

SUMMARY: This is in response to a petition for an extension of time filed by the Wyoming Department of Revenue and Taxation (Wyoming). Wyoming cannot conform its laws and its title documents to meet the requirements of the Truth in Mileage Act and the final rule implementing the Act by April 29, 1989, the effective date of the statutory and regulatory requirements. Therefore, the petition requests that NHTSA grant Wyoming an extension of time, until September 1, 1990, to achieve compliance. Because Wyoming has made an effort to meet the deadline, sets forth reasons why it has failed to do so, and has included a description of the steps to be taken while the extension is in effect, we have granted Wyoming's petition for an extension of time. Wyoming has until September 1, 1990 to revise its laws and its title documents to meet the requirements of the Truth in Mileage Act and the final rule.

FOR FURTHER INFORMATION CONTACT: Judith Kaleta, Office of the Chief Counsel, Room 5219, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202-366-1834).

SUPPLEMENTARY INFORMATION:

Background

Section 2(c) of the Truth in Mileage Act of 1986 authorizes the National Highway Traffic Safety Administration (NHTSA) to provide for an extension of time in the event that any State requires additional time beyond April 29, 1989, in revising its laws to meet the requirements of the Motor Vehicle Information and Cost Savings Act and the implementing regulations set forth in 49 CFR Part 580. It provides that, in granting an extension, NHTSA "shall

ensure that the State is making reasonable efforts to achieve compliance."

To implement the Truth in Mileage Act and to make some needed changes in the Federal odometer laws, the agency published final rules which provide that a State may file a petition for an extension of time. The petition should discuss the efforts the State has taken to meet the deadline, the reasons why it needs additional time, the length of time desired for extension, and a description of the steps to be taken while the extension is in effect. 53 FR 29464 (1988).

Wyoming's Petition

The Wyoming Department of Revenue and Taxation (Wyoming) submitted a petition for an extension of time. In support of its petition, Wyoming states that it has reviewed its laws and its title documents. The laws must be amended in order to change the title documents to comply with the new Federal regulatory requirements. Nevertheless, to expedite the process, Wyoming intends to submit a draft title for bids in the near future. In addition, Wyoming states that it will undertake an analysis concerning the use of powers of attorney and dealer reassignment forms. Finally, Wyoming estimates that it has a twelve to eighteen month supply of titles on hand and that to replace the current supply with conforming title documents could "create a severe financial burden". For these reasons, Wyoming requests that it be granted an extension of time until September 1, 1990.

NHTSA's Response to the Petition

NHTSA finds that Wyoming has made reasonable efforts to achieve compliance with the Motor Vehicle Information and Cost Savings Act and the implementing regulations.

Wyoming has reveiwed its title documents, statutes, and administrative procedures. It has determined that legislative action is necessary. In addition, Wyoming has been working to design a new title document and will submit the title for bids in the near future. Finally, Wyoming intends to consider printing secure power of attorney forms.

In light of Wyoming's past and planned actions and in order to allow Wyoming to expend its current supply of titles, we grant Wyoming's request for an extension of time until September 1, 1990, to revise its laws and its title documents to meet the Federal criteria.

Authority: 15 U.S.C. 1988 note; delegation of authority at 49 CFR 1.50(f) and 501.8(e).

Issued on April 11, 1989.

Erika Z. Jones,

Chief Counsel, National Highway Traffic Safety Administration.

[FR Doc. 89-9043 Filed 4-12-89; 8:45 am]

BILLING CODE 4910-59-M

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49 CFR Part 580

[Docket Number 87-09; Notice 4Y]

Odometer Disclosure Requirements

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Grant of Petition for Extension of Time (North Dakota)

SUMMARY: This is in response to a petition for an extension of time filed by the North Dakota Motor Vehicle Department (North Dakota). North Dakota cannot conform its laws and its title documents to meet the requirements of the Truth in Mileage Act and the final rule implementing the Act by April 29, 1989, the effective date of the statutory and regulatory requirements. Therefore, the petition requests that NHTSA grant North Dakota an extension of time, until January 1, 1991, to achieve compliance. Because North Dakota has made an effort to meet the deadline, sets forth reasons why it has failed to do so, and has included a description of the steps to be taken while the extension is in effect, we have granted North Dakota's petition for an extension of time. North Dakota has until January 1, 1991 to revise its laws and its title documents to meet the requirements of the Truth in Mileage Act and the final rule.

FOR FURTHER INFORMATION CONTACT: Judith Kaleta, Office of the Chief Counsel, Room 5219, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202-366-1834).

SUPPLEMENTARY INFORMATION:

Background

Section 2(c) of the Truth in Mileage Act of 1986 authorizes the National Highway Traffic Safety Administration (NHTSA) to provide for an extension of time in the event that any State requires additional time beyond April 29, 1989, in revising its laws to meet the requirements of the Motor Vehicle Information and Cost Savings Act and the implementing regulations set forth in 49 CFR Part 580. It provides that, in granting an extension, NHTSA "shall ensure that the State is making reasonable efforts to achieve compliance."

To implement the Truth in Mileage Act and to make some needed changes in the Federal odometer laws, the agency published final rules which provide that a State may file a petition for an extension of time. The petition should discuss the efforts the State has taken to meet the deadline, the reasons why it needs additional time, the length of time desired for extension, and a description of the steps to be taken while the extension is in effect. 53 FR 29464 (1988).

North Dakota's Petition

The North Dakota Motor Vehicle Department (North Dakota) submitted a petition for an extension of time. In support of its petition, North Dakota states that legislative change is necessary and explains that it has introduced conforming legislation. North Dakota anticipates that this legislation will be enacted by July 1, 1989. In addition, North Dakota states that since it has not had odometer disclosure requirements, it will conduct a public information campaign to ensure that motorists are aware of the requirements. Finally, North Dakota states that it is redesigning its title. However, North Dakota asserts that it currently has a supply of titles that may last for approximately two years and that replacement with conforming titles prior to exhausting the current supply, will create a "severe financial burden." As soon as the current supply is expended, North Dakota states that it will begin to issue new, conforming titles. For these reasons, North Dakota requests that it be granted an extension of time until January 1, 1991.

NHTSA's Response to the Petition

NHTSA finds that North Dakota has made reasonable efforts to achieve compliance with the Motor Vehicle Information and Cost Savings Act and the implementing regulations.

Since the enactment of the Truth in Mileage Act and the issuance of the implementing Federal regulations, North Dakota has drafted legislation to incorporate the Federal requirements. This legislation has already been introduced and may be enacted by July 1989. In addition, North Dakota is currently designing a title that would meet all the Federal requirements. It will also be conducting a public information campaign to ensure that vehicle owners are aware of the new requirements.

In light of North Dakota's past and planned actions, and in order to allow the State to expend its current supply of title documents, we grant North Dakota's request for an extension of

time until January 1, 1991, to revise its laws and its title documents to meet the Federal criteria.

Authority: 15 U.S.C. 1988 note; delegation of authority at 49 CFR 1.50(f) and 501.8(e)

Issued on April 11, 1989.

Erika Z. Jones

Chief Counsel, National Highway Traffic Safety Administration.

[FR Doc. 89-9044 Filed 04-12-89; 8:45 am]

BILLING CODE 4910-59-M

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49 CFR Part 580

[Docket Number 87-09; Notice 4Z]

Odometer Disclosure Requirements

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Grant of Petition for Extension of Time (Pennsylvania).

SUMMARY: This is in response to a petition for an extension of time filed by the Pennsylvania Department of Transportation, Bureau of Motor Vehicles, (Pennsylvania). Pennsylvania cannot conform its title documents to meet the requirements of the Truth in Mileage Act and the final rule implementing the Act by April 29, 1989, the effective date of the statutory and regulatory requirements. Therefore, the petition requests that NHTSA grant Pennsylvania an extension of time, until January 1, 1990, to achieve compliance. Because Pennsylvania has made an effort to meet the deadline, sets forth reasons why it has failed to do so, and has included a description of the steps to be taken while the extension is in effect, we have granted Pennsylvania's petition for an extension of time. Pennsylvania has until January 1, 1990 to revise its title documents to meet the requirements of the Truth in Mileage Act and the final rule.

FOR FURTHER INFORMATION CONTACT: Judith Kaleta, Office of the Chief Counsel, Room 5219, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202-366-1834).

SUPPLEMENTARY INFORMATION:

Background

Section 2(c) of the Truth in Mileage Act of 1986 authorizes the National Highway Traffic Safety Administration (NHTSA) to provide for an extension of time in the event that any State requires additional time beyond April 29, 1989, in revising its laws to meet the requirements of the Motor Vehicle Information and Cost Savings Act and the implementing regulations set forth in 49 CFR Part 580. It provides that, in granting an extension, NHTSA "shall ensure that the State is making reasonable efforts to achieve compliance."

To implement the Truth in Mileage Act and to make some needed changes in the Federal odometer laws, the agency published final rules which provide that a State may file a petition for an extension of time. The petition should discuss the efforts the State has taken to meet the deadline, the reasons why it needs additional time, the length of time desired for extension, and a description of the steps to be taken while the extension is in effect. 53 FR 29464 (1988).

Pennsylvania's Petition

The Pennsylvania Department of Transportation, Bureau of Motor Vehicles, (Pennsylvania) submitted a petition for an extension of time. In support of its petition, Pennsylvania states that it already prints its titles by a secure process, includes a mileage reading when it issues its titles, has disclosure requirements applicable to lessees and lessors, and requires the retention of certain odometer information by auction companies. Pennsylvania explains that it needs additional time to incorporate enhancements to its forms and its processes. For example, Pennsylvania notes that it has redesigned its title document to incorporate all the new Federal regulatory requirements and that it will eliminate separate dealer reassignment forms (MV-27). Additionally, Pennsylvania states that it currently accepts powers of attorney forms on title assignments and plans to review the Federal requirements concerning powers of attorney in connection with mileage disclosure. Finally, Pennsylvania states that expending its current supply of titles would be a cost savings measure. For these reasons, Pennsylvania requests an extension of time until January 1, 1990.

NHTSA's Response to the Petition

NHTSA finds that Pennsylvania has made reasonable efforts to achieve compliance with the Motor Vehicle Information and Cost Savings Act and the implementing regulations.

Pennsylvania currently issues titles that are set forth by a secure printing process and that contain a mileage disclosure. Nevertheless, Pennsylvania has reviewed its title document and has determined that changes are necessary to conform the disclosure information on the reverse side of the title. Pennsylvania has redesigned its title document to incorporate all the new Federal odometer disclosure requirements. However, Pennsylvania requests an extension as a cost savings measure to expend its current supply of titles. In addition, Pennsylvania wishes to review the Federal requirements concerning the use of powers of attorney in connection with mileage disclosures.

In light of Pennsylvania's past and planned actions and in order to permit the State to expend its current supply of title documents, we grant Pennsylvania's request for an extension of time until January 1, 1990, to revise its title documents to meet the Federal criteria.

Authority: 15 U.S.C. 1988 note; delegation of authority at 49 CFR 1.50(f) and 501.8(e).

Issued on April 11, 1989.

Erika Z. Jones,

Chief Counsel, National Highway Traffic Safety Administration.

[FR Doc. 89-9045 Filed 4-12-89; 8:45 am]

BILLING CODE 4910-59-M

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49 CFR Part 580

[Docket Number 87-09; Notice 4AA]

Odometer Disclosure Requirements

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Grant of Petition for Extension of Time (Connecticut).

SUMMARY: This is in response to a petition for an extension of time filed by the Connecticut Department of Motor Vehicles (Connecticut). Connecticut cannot conform its title documents to meet the requirements of the Truth in Mileage Act and the final rule implementing the Act by April 29, 1989, the effective date of the statutory and regulatory requirements. Therefore, the petition requests that NHTSA grant Connecticut an extension of time, until April 29, 1990, to achieve compliance. Because Connecticut has made an effort to meet the deadline, sets forth reasons why it has failed to do so, and has included a description of the steps to be taken while the extension is in effect, we have granted Connecticut's petition for an extension of time. Connecticut has until April 29, 1990 to revise its title documents to meet the requirements of the Truth in Mileage Act and the final rule.

FOR FURTHER INFORMATION CONTACT: Judith Kaleta, Office of the Chief Counsel, Room 5219, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202-366-1834).

SUPPLEMENTARY INFORMATION:

Background

Section 2(c) of the Truth in Mileage Act of 1986 authorizes the National Highway Traffic Safety Administration (NHTSA) to provide for an extension of time in the event that any State requires additional time beyond April 29, 1989, in revising its laws to meet the requirements of the Motor Vehicle Information and Cost Savings Act and the implementing regulations set forth in 49 CFR Part 580. It provides that, in granting an extension, NHTSA "shall ensure that the State is making reasonable efforts to achieve compliance."

To implement the Truth in Mileage Act and to make some needed changes in the Federal odometer laws, the agency published final rules which provide that a State may file a petition for an extension of time. The petition should discuss the efforts the State has taken to meet the deadline, the reasons why it needs additional time, the length of time desired for extension, and a description of the steps to be taken while the extension is in effect. 53 FR 29464 (1988).

Connecticut's Petition

The Connecticut Department of Motor Vehicles (Connecticut) submitted a petition for an extension of time. In support of its petition, Connecticut states that by April 29, 1989, it will have amended the Commissioner's Regulations to include the Federal regulatory definitions. In addition, Connecticut states that its title document is set forth by means of a secure printing process and that, effective April 29, 1989, Connecticut will print the odometer reading on the face of the title and whether or not the reading reflects the actual mileage or whether the odometer reading reflects the mileage in excess of the designed mechanical limits of the odometer. However, Connecticut explains that it cannot conform its title documents to all the other Federal regulatory requirements by April 29, 1989. Connecticut has a one year supply of three ownership documents, at a total document cost of $61,000. Connecticut explains that these documents are very costly and that destroying them could result in a financial burden to the State. Connecticut plans to revise the current title documents to meet the Federal requirements and have them printed and distributed within twelve months. Until the current supply is depleted, Connecticut will use a supplemental odometer disclosure statement which meets the Federal regulatory requirements. Because the current inventory of title documents will be depleted by April 1990, Connecticut requests that it be granted an extension of time until April 29, 1990.

NHTSA's Response to the Petition

NHTSA finds that Connecticut has made reasonable efforts to achieve compliance with the Motor Vehicle Information and Cost Savings Act and the implementing regulations.

Since the enactment of the Truth in Mileage Act and the issuance of the implementing Federal regulations, Connecticut drafted regulations to incorporate the Federal regulatory definitions into the Commissioner's Regulations. In addition, Connecticut is working on the design of the new ownership documents and expects that these documents will be ready to use within twelve months. Finally, Connecticut has decided to eliminate any form that would permit dealers to sign an odometer disclosure statement as both the transferor and transferee in the same transaction.

In light of Connecticut's past and planned actions, and in order to allow Connecticut to expend its current supply of titles documents, we grant Connecticut's request for an extension of time until April 29, 1990, to revise its title documents to meet the Federal criteria.

Authority: 15 U.S.C. 1988 note; delegation of authority at 49 CFR 1.50(f) and 501.8(e)

Issued on April 11, 1989.

Erika Z. Jones,

Chief Counsel, National Highway Traffic Safety Administration.

[FR Doc. 89-9046 Filed 4-12-89; 8:45 am]

BILLING CODE 4910-59-M

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49 CFR Part 580

[Docket Number 87-09; Notice 4BB]

Odometer Disclosure Requirements

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Grant of Petition for Extension of Time (Arizona).

SUMMARY: This is in response to a petition for an extension of time filed by the Arizona Department of Transportation, Motor Vehicle Division, (Arizona). Arizona cannot conform its title documents to meet the requirements of the Truth in Mileage Act and the final rule implementing the Act by April 29, 1989, the effective date of the statutory and regulatory requirements. Therefore, the petition requests that NHTSA grant Arizona an extension of time, until December 1990, to achieve compliance. Because Arizona has made an effort to meet the deadline, sets forth reasons why it has failed to do so, and has included a description of the steps to be taken while the extension is in effect, we have granted Arizona's petition for an extension of time. Arizona has until December 1, 1990, to revise its title documents to meet the requirements of the Truth in Mileage Act and the final rule.

FOR FURTHER INFORMATION CONTACT: Judith Kaleta, Office of the Chief Counsel, Room 5219, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590 (202-366-1834).

SUPPLEMENTARY INFORMATION:

Background

Section 2(c) of the Truth in Mileage Act of 1986 authorizes the National Highway Traffic Safety Administration (NHTSA) to provide for an extension of time in the event that any State requires additional time beyond April 29, 1989, in revising its laws to meet the requirements of the Motor Vehicle Information and Cost Savings Act and the implementing regulations set forth in 49 CFR Part 580. It provides that, in granting an extension, NHTSA "shall ensure that the State is making reasonable efforts to achieve compliance."

To implement the Truth in Mileage Act and to make some needed changes in the Federal odometer laws, the agency published final rules which provide that a State may file a petition for an extension of time. The petition should discuss the efforts the State has taken to meet the deadline, the reasons why it needs additional time, the length of time desired for extension, and a description of the steps to be taken while the extension is in effect. 53 FR 29464 (1988).

Arizona's Petition

The Arizona Department of Transportation, Motor Vehicle Division, (Arizona) submitted a petition for an extension of time. In support of its petition, Arizona states that it has been working to achieve compliance with the Federal requirements. Arizona asserts that since October 1987, it has been issuing a computer generated title document. In addition, Arizona notes that the title document is securely printed by the intaglio process, and has latent images, microline printing, and background inks that fluoresce under ultraviolet light. However, Arizona has reviewed the title document and recognizes that it does not meet all the new Federal regulatory requirements. To

permit Arizona to amend the title document and to allow Arizona to expend its current supply of almost 2,000,000 titles, Arizona requests an extension of time until December 1990.

NHTSA's Response to the Petition

NHTSA finds that Arizona has made reasonable efforts to achieve compliance with the Motor Vehicle Information and Cost Savings Act and the implementing regulations.

Since October 1987, Arizona has issued computer generated title documents that are intaglio printed and incorporate other security features. In addition, Arizona plans to design a new title document to include a conforming disclosure on the reverse side of the document. Arizona has submitted a sample of its current title and the State will be notified in a letter of the changes that are necessary to bring the title document into compliance.

In light of Arizona's past and planned actions and in order to permit the State to expend its current supply of title documents, we grant Arizona's request for an extension of time until December 1, 1990, to revise its title documents to meet the Federal criteria.

Authority: 15 U.S.C. 1988 note; delegation of authority at 49 CFR 1.50(f) and 501.8(e).

Issued on April 11, 1989.

Erika Z. Jones,

Chief Counsel, National Highway Traffic Safety Administration.

[FR Doc. 89-9047 Filed 4-12-89; 8:45 am]

BILLING CODE 4910-59-M

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49 CFR Part 580

[Docket Number 87-09; Notice 4CC]

Odometer Disclosure Requirements

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Grant of Petition for Extension of Time (Iowa).

SUMMARY: This is in response to a petition for an extension of time filed by the Iowa Department of Transportation, Motor Vehicle Division (Iowa). Iowa cannot conform its laws and its title documents to meet the requirements of the Truth in Mileage Act and the final rule implementing the Act by April 29, 1989, the effective date of the statutory and regulatory requirements. Therefore, the petition requests that NHTSA grant Iowa an extension of time, until July 1, 1990, to achieve compliance. Because Iowa has made an effort to meet the deadline, sets forth reasons why it has failed to do so, and has included a description of the steps to be taken while the extension is in effect, we have granted Iowa's petition for an extension of time. Iowa has until July 1, 1990 to revise its laws and its title documents to meet the requirements of the Truth in Mileage Act and the final rule.

FOR FURTHER INFORMATION CONTACT: Judith Kaleta, Office of the Chief Counsel, Room 5219, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202-366-1834).

SUPPLEMENTARY INFORMATION:

Background

Section 2(c) of the Truth in Mileage Act of 1986 authorizes the National Highway Traffic Safety Administration (NHTSA) to provide for an extension of time in the event that any State requires additional time beyond April 29, 1989, in revising its laws to meet the requirements of the Motor Vehicle Information and Cost Savings Act and the implementing regulations set forth in 49 CFR Part 580. It provides that, in granting an extension, NHTSA "shall ensure that the State is making reasonable efforts to achieve compliance."

To implement the Truth in Mileage Act and to make some needed changes in the Federal odometer laws, the agency published final rules which provide that a State may file a petition for an extension of time. The petition should discuss the efforts the State has taken to meet the deadline, the reasons why it needs additional time, the length of time desired for extension, and a description of the steps to be taken while the extension is in effect. 53 FR 29464 (1988).

Iowa's Petition

The Iowa Department of Transportation, Motor Vehicle Division, (Iowa) submitted a petition for an extension of time. In support of its petition, Iowa states that, since the enactment of the Truth in Mileage Act of 1986, it has been working to achieve compliance with the Federal requirements. Iowa declares that it reviewed the Act and concluded that the title needed only minor changes. Iowa notes that it followed the regulatory process, submitted comments to NHTSA expressing its concerns, and met with representatives of the Iowa Dealers Association, the Attorney General's Office, financial institutions, and the auction industry to discuss implementation. Iowa states that it has determined that form, legislative, and system changes are necessary to comply with the Federal requirements. Iowa explains that it will request complying legislation in June 1989 and anticipates that this legislation will become effective on July 1, 1990. These legislative changes would include adding a mileage brand and revising the types of vehicles that are subject to the odometer requirements. With regard to its titling system, Iowa states that major changes in odometer recording and print programs are necessary to comply with the Federal requirements. Finally, Iowa states that it has approximately 1.5 million titles in inventory. For these reasons, Iowa requests that it be granted an extension of time until July 1, 1990.

NHTSA's Response to the Petition

NHTSA finds that Iowa has made reasonable efforts to achieve compliance with the Motor Vehicle Information and Cost Savings Act and the implementing regulations.

Since the enactment of the Truth in Mileage Act of 1986, Iowa has been working to comply with the new Federal requirements. Iowa has analyzed its title documents, its legislation, and its titling system and determined that changes are necessary. Iowa will request complying legislation in June 1989 to permit Iowa to amend its title documents. In addition, Iowa is planning major changes to its titling system, specifically in the areas of odometer recording and print programs.

In light of Iowa's past and planned actions and in order to allow Iowa to expend its current supply of title documents, we grant Iowa's request for an extension of time until July 1, 1990, to revise its laws and its title documents to meet the Federal criteria.

Authority: 15 U.S.C. 1988 note; delegation of authority at 49 CFR 1.50(f) and 501.8(e)

Issued on April 11, 1989.

Erika Z. Jones,

Chief Counsel, National Highway Traffic Safety Administration.

[FR Doc. 89-9048 Filed 4-12-89; 8:45 am]

BILLING CODE 4910-59-M

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49 CFR Part 580

[Docket Number 87-09; Notice 4Q]

Odometer Disclosure Requirements

AGENCY: National Highway Traffic Safety Administration.

ACTION: Grant of Petition for Extension of Time (Hawaii).

SUMMARY: This is in response to a petition for an extension of time filed by the City and County of Honolulu Department of Finance, Division of Motor Vehicles and Licensing, (Hawaii). Hawaii cannot issue title documents to

meet the requirements of the Truth in Mileage Act and the final rule implementing the Act by April 29, 1989, the effective date of the statutory and regulatory requirements. Therefore, the petition requests that NHTSA grant Hawaii an extension of time, until May 1, 1990, to achieve compliance. Because Hawaii has made an effort to meet the deadline, sets forth reasons why it has failed to do so, and has included a description of the steps to be taken while the extension is in effect, we have granted Hawaii's petition for an extension of time. Hawaii has until May 1, 1990 to meet the requirements of the Truth in Mileage Act and the final rule.

FOR FURTHER INFORMATION CONTACT: Judith Kaleta, Office of the Chief Counsel, Room 5219, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590 (202–366–1834).

SUPPLEMENTARY INFORMATION:

Background

Section 2(c) of the Truth in Mileage Act of 1986 authorizes the National Highway Traffic Safety Administration (NHTSA) to provide for an extension of time in the event that any State requires additional time beyond April 29, 1989, in revising its laws to meet the requirements of the Motor Vehicle Information and Cost Savings Act and the implementing regulations set forth in 49 CFR Part 580. It provides that, in granting an extension, NHTSA "shall ensure that the State is making reasonable efforts to achieve compliance."

To implement the Truth in Mileage Act and to make some needed changes in the Federal odometer laws, the agency published final rules which provide that a State may file a petition for an extension of time. The petition should discuss the efforts the State has taken to meet the deadline, the reasons why it needs additional time, the length of time desired for extension, and a description of the steps to be taken while the extension is in effect. 53 FR 29464 (1988).

Hawaii's Petition

The City and County of Honolulu Department of Finance, Division of Motor Vehicles and Licensing, (Hawaii) submitted a petition for an extension of time. In support of its petition, Hawaii states that Hawaii does not have a State Department of Motor Vehicles. Rather each county is responsible for titling vehicles in its own jurisdiction and each county currently issues a certificate of ownership. The counties have been working together to design a Hawaii certificate of title that would meet the Federal requirements and the needs of the individual counties. Hawaii states that computer programming changes are also needed and that there is a stock of Certificates of Ownership on hand. The current inventory of Certificates of Ownership will be depleted by May 1, 1990. To allow for the depletion of the current supply of ownership documents and for the manufacture and delivery of the new Hawaii Certificate of Title and to effectuate the necessary computer programming changes and the testing of those changes, Hawaii requests that it be granted an extension of time until May 1, 1990.

NHTSA's Response to the Petition

NHTSA finds that Hawaii has made reasonable efforts to achieve compliance with the Motor Vehicle Information and Cost Savings Act and the implementing regulations.

Since the enactment of the Truth in Mileage Act and the issuance of the implementing Federal regulations, Hawaii has been working to design a Hawaii title document that would meet the Federal requirements and the needs of each county. Hawaii has also been working on ways to ensure that the appropriate computer programming changes are made so that the information printed by the titling authorities may be computer generated.

In light of Hawaii's past and planned actions, and in order to allow the counties of Hawaii to expend their current supply of certificates of ownership, we grant Hawaii's request for an extension of time until May 1, 1990, to meet the Federal criteria.

Authority: 15 U.S.C. 1988 note; delegation of authority at 49 CFR 1.50(f) and 501.8(e).

Issued on April 11, 1989.

Erika Z. Jones,

Chief Counsel, National Highway Traffic Safety Administration.

[FR Doc. 89–9049 Filed 4–12–89; 8:45 am]

BILLING CODE 4910–59–M

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49 CFR Part 580

[Docket Number 87–09; Notice 4R]

Odometer Disclosure Requirements

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Grant of Petition for Extension of Time (Maine).

SUMMARY: This is in response to a petition for an extension of time filed by the Maine Department of State, Motor Vehicle Division, (Maine). Maine cannot conform its laws and its title documents to meet the requirements of the Truth in Mileage Act and the final rule implementing the Act by April 29, 1989, the effective date of the statutory and regulatory requirements. Therefore, the petition requests that NHTSA grant Maine an extension of time, until December 31, 1989, to achieve compliance. Because Maine has made an effort to meet the deadline, sets forth reasons why it has failed to do so, and has included a description of the steps to be taken while the extension is in effect, we have granted Maine's petition for an extension of time. Maine has until December 31, 1989 to revise its laws and its title documents to meet the requirements of the Truth in Mileage Act and the final rule.

FOR FURTHER INFORMATION CONTACT: Judith Kaleta, Office of the Chief Counsel, Room 5219, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202–366–1834).

SUPPLEMENTARY INFORMATION:

Background

Section 2(c) of the Truth in Mileage Act of 1986 authorizes the National Highway Traffic Safety Administration (NHTSA) to provide for an extension of time in the event that any State requires additional time beyond April 29, 1989, in revising its laws to meet the requirements of the Motor Vehicle Information and Cost Savings Act and the implementing regulations set forth in 49 CFR Part 580. It provides that, in granting an extension, NHTSA "shall ensure that the State is making reasonable efforts to achieve compliance."

To implement the Truth in Mileage Act and to make some needed changes in the Federal odometer laws, the agency published final rules which provide that a State may file a petition for an extension of time. The petition should discuss the efforts the State has taken to meet the deadline, the reasons why it needs additional time, the length of time desired for extension, and a description of the steps to be taken while the extension is in effect. 53 FR 29464 (1988).

Maine's Petition

The Maine Department of State, Motor Vehicle Division, (Maine) submitted a petition for an extension of time. In support of its petition, Maine states that, since October 1988, it has been working to achieve compliance with the Federal requirements. Maine declares that from October through December 1988, it drafted legislation. This legislation will be considered

during the current legislative session and would not be effective until ninety days after the legislature adjourns, approximately mid-September. In addition, Maine states that it redesigned its title documents and that it is seeking bids on the title documents and on secure transfer forms, together with other New England States. Maine also plans to seek bids on secure power of attorney forms. Since the contracts have not been awarded, the vendor will be unable to provide documents before April 29, 1989. Maine notes that purchasing titles outside of the New England purchasing pool would create a severe financial burden. Therefore, Maine requests that it be granted an extension of time until December 31, 1989. While the extension is in effect, Maine states that it will require that a complying odometer disclosure statement be submitted with the title application.

NHTSA's Response to the Petition

NHTSA finds that Maine has made reasonable efforts to achieve compliance with the Motor Vehicle Information and Cost Savings Act and the implementing regulations.

Since October 1988, Maine has drafted complying legislation. In addition, Maine has designed a new title document and a secure transfer form. Maine is currently seeking bids to purchase these documents. While the extension is in effect, Maine will require purchasers to submit a conforming odometer disclosure statement with the title that has been transferred to them and the application for title.

In light of Maine's past and planned actions, we grant Maine's request for an extension of time until December 31, 1989, to revise its laws and its title documents to meet the Federal criteria.

Authority: 15 U.S.C. 1988 note; delegation of authority at 49 CFR 1.50(f) and 501.8(e).

Issued on April 11, 1989.

Erika Z. Jones,

Chief Counsel, National Highway Traffic Safety Administration.

[FR Doc. 89-9050 Filed 04-12-89; 8:45 am]

BILLING CODE 4910-59-M

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49 CFR Part 580

[Docket Number 87-09; Notice 4S]

Odometer Disclosure Requirements

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Grant of Petition for Extension of Time (Montana).

SUMMARY: This is in response to a petition for an extension of time filed by the Montana Department of Justice, Motor Vehicle Division, (Montana). Montana cannot conform its laws and its title documents to meet the requirements of the Truth in Mileage Act and the final rule implementing the Act by April 29, 1989, the effective date of the statutory and regulatory requirements. Therefore, the petition requests that NHTSA grant Montana an extension of time, until August 1, 1989, to achieve compliance. Because Montana has made an effort to meet the deadline, sets forth reasons why it has failed to do so, and has included a description of the steps to be taken while the extension is in effect, we have granted Montana's petition for an extension of time. Montana has until August 1, 1989 to revise its laws and its title documents to meet the requirements of the Truth in Mileage Act and the final rule.

FOR FURTHER INFORMATION CONTACT: Judith Kaleta, Office of the Chief Counsel, Room 5219, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202-366-1834).

SUPPLEMENTARY INFORMATION:

Background

Section 2(c) of the Truth in Mileage Act of 1986 authorizes the National Highway Traffic Safety Administration (NHTSA) to provide for an extension of time in the event that any State requires additional time beyond April 29, 1989, in revising its laws to meet the requirements of the Motor Vehicle Information and Cost Savings Act and the implementing regulations set forth in 49 CFR Part 580. It provides that, in granting an extension, NHTSA "shall ensure that the State is making reasonable efforts to achieve compliance."

To implement the Truth in Mileage Act and to make some needed changes in the Federal odometer laws, the agency published final rules which provide that a State may file a petition for an extension of time. The petition should discuss the efforts the State has taken to meet the deadline, the reasons why it needs additional time, the length of time desired for extension, and a description of the steps to be taken while the extension is in effect. 53 FR 29464 (1988).

Montana's Petition

The Montana Department of Justice, Motor Vehicle Division, (Montana) submitted a petition for an extension of time. In support of its petition, Montana states that the Montana Legislature passed a bill, HB130, that would bring the Montana odometer statutes into compliance with the Truth in Mileage Act. The bill has been sent to the Governor for signature. In addition, Montana states that it has a five-month supply of nonconforming titles on hand and that it is in the process of redesigning it's title. Until the current supply is depleted, Montana states that it will require that a conforming odometer disclosure statement accompany the current title document and the application for title. Because the current inventory of title documents will be depleted in approximately five months, Montana requests that it be granted an extension of time until August 1, 1989.

NHTSA's Response to the Petition

NHTSA finds that Montana has made reasonable efforts to achieve compliance with the Motor Vehicle Information and Cost Savings Act and the implementing regulations.

Since the enactment of the Truth in Mileage Act and the issuance of the implementing Federal regulations, Montana drafted legislation to amend its odometer statutes to bring them into conformity with the Truth in Mileage Act of 1986. The bill was passed by the Montana Legislature and has already been sent to the Governor for signature. In addition, Montana has been redesigning and reformatting its title document.

In light of Montana's past and planned actions, and in order to allow Montana to expend its current supply of titles documents, we grant Montana's request for an extension of time until August 1, 1989, to revise its laws and its title documents to meet the Federal criteria.

Authority: 15 U.S.C. 1988 note; delegation of authority at 49 CFR 1.50(f) and 501.8(e).

Issued on April 11, 1989.

Erika Z. Jones,

Chief Counsel, National Highway Traffic Safety Administration.

[FR Doc. 89-9051 Filed 4-12-89; 8:45 am]

BILLING CODE 4910-59-M

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49 CFR Part 580

[Docket Number 87-09; Notice 4U]

Odometer Disclosure Requirements

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Grant of Petition for Extension of Time (Washington).

SUMMARY: This is in response to a petition for an extension of time filed by the Washington Department of Licensing (Washington). Washington

cannot conform its laws and its title documents to meet the requirements of the Truth in Mileage Act and the final rule implementing the Act by April 29, 1989, the effective date of the statutory and regulatory requirements. Therefore, the petition requests that NHTSA grant Washington an extension of time, until April 29, 1990, to achieve compliance. Because Washington has made an effort to meet the deadline, sets forth reasons why it has failed to do so, and has included a description of the steps to be taken while the extension is in effect, we have granted Washington's petition for an extension of time. Washington has until April 29, 1990 to revise its laws and its title documents to meet the requirements of the Truth in Mileage Act and the final rule.

FOR FURTHER INFORMATION CONTACT: Judith Kaleta, Office of the Chief Counsel, Room 5219, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202–366–1834).

SUPPLEMENTARY INFORMATION:

Background

Section 2(c) of the Truth in Mileage Act of 1986 authorizes the National Highway Traffic Safety Administration (NHTSA) to provide for an extension of time in the event that any State requires additional time beyond April 29, 1989, in revising its laws to meet the requirements of the Motor Vehicle Information and Cost Savings Act and the implementing regulations set forth in 49 CFR Part 580. It provides that, in granting an extension, NHTSA "shall ensure that the State is making reasonable efforts to achieve compliance."

To implement the Truth in Mileage Act and to make some needed changes in the Federal odometer laws, the agency published final rules which provide that a State may file a petition for an extension of time. The petition should discuss the efforts the State has taken to meet the deadline, the reasons why it needs additional time, the length of time desired for extension, and a description of the steps to be taken while the extension is in effect. 53 FR 29464 (1988).

Washington's Petition

The Washington Department of Licensing (Washington) submitted a petition for an extension of time. In support of its petition, Washington states that, since the passage of the Truth in Mileage Act, it has been working to achieve compliance with the Federal requirements. Washington declares that it submitted legislation during the 1987 and 1988 legislative sessions. However, because the legislation was not enacted, Washington asserts that new legislation has been drafted and will be submitted during the 1990 session. In addition, Washington notes that it has reviewed its title and determined that it does not comply with the new Federal regulatory requirements. Therefore, Washington states that a new title document is being drafted and should be revised to comply with the Federal requirements by January 1990. Washington also plans to issue secure power of attorney forms, revise its vehicle records data base, and train its license and title agents in the new titling procedures. For these reasons, Washington requests that it be granted an extension of time until April 29, 1990.

NHTSA's Response to the Petition

NHTSA finds that Washington has made reasonable efforts to achieve compliance with the Motor Vehicle Information and Cost Savings Act and the implementing regulations.

Since 1987, Washington has attempted to draft and enact complying legislation and will submit legislation during the 1990 legislative session. In addition, Washington has been working to design a new title document and to convert its vehicle records data base to include odometer disclosure information. Washington plans to train its license and title agents in the new titling procedures.

In light of Washington's past and planned actions, we grant Washington's request for an extension of time until April 29, 1990, to revise its laws and its title documents to meet the Federal criteria.

Authority: 15 U.S.C. 1988 note; delegation of authority at 49 CFR 1.50(f) and 501.8(e)

Issued on April 11, 1989.

Erika Z. Jones,

Chief Counsel, National Highway Traffic Safety Administration.

[FR Doc. 89–9053 Filed 4–12–89; 8:45 am]

BILLING CODE 4910–59–M

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49 CFR Part 580

[Docket Number 87–09; Notice 4V]

Odometer Disclosure Requirements

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Grant of Petition for Extension of Time (Wisconsin).

SUMMARY: This is in response to a petition for an extension of time filed by the Wisconsin Department of Transportation, Division of Motor Vehicles (Wisconsin). Wisconsin cannot conform its laws and its title documents to meet the requirements of the Truth in Mileage Act and the final rule implementing the Act by April 29, 1989, the effective date of the statutory and regulatory requirements. Therefore, the petition requests that NHTSA grant Wisconsin an extension of time, until October 29, 1990, to achieve compliance. Because Wisconsin has made an effort to meet the deadline, sets forth reasons why it has failed to do so, and has included a description of the steps to be taken while the extension is in effect, we have granted Wisconsin's petition for an extension of time. Wisconsin has until October 29, 1990, to revise its laws and its title documents to meet the requirements of the Truth in Mileage Act and the final rule.

FOR FURTHER INFORMATION CONTACT: Judith Kaleta, Office of the Chief Counsel, Room 5219, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590 (202–366–1834).

SUPPLEMENTARY INFORMATION:

Background

Section 2(c) of the Truth in Mileage Act of 1986 authorizes the National Highway Traffic Safety Administration (NHTSA) to provide for an extension of time in the event that any State requires additional time beyond April 29, 1989, in revising its laws to meet the requirements of the Motor Vehicle Information and Cost Savings Act and the implementing regulations set forth in 49 CFR Part 580. It provides that, in granting an extension, NHTSA "shall ensure that the State is making reasonable efforts to achieve compliance."

To implement the Truth in Mileage Act and to make some needed changes in the Federal odometer laws, the agency published final rules which provide that a State may file a petition for an extension of time. The petition should discuss the efforts the State has taken to meet the deadline, the reasons why it needs additional time, the length of time desired for extension, and a description of the steps to be taken while the extension is in effect. 53 FR 29464 (1988).

Wisconsin's Petition

The Wisconsin Department of Transportation, Division of Motor Vehicles (Wisconsin), submitted a petition for an extension of time. In support of its petition, Wisconsin states that, since the passage of the Truth in Mileage Act, it has been working to

achieve compliance with the Federal requirements. Wisconsin declares that it is necessary to amend the Wisconsin laws. It explains that the present legislature is the first to convene since the issuance of NHTSA's August 1988 final rule and that the legislature will consider amendments to the Wisconsin odometer laws in late 1989. In addition, Wisconsin notes that it has reviewed its title and, although the title includes an odometer reading and brand on the face of the title, the title does not comply with the new Federal regulatory requirements. Therefore, Wisconsin states that it will redesign its title and, consistent with the new design, Wisconsin will make data processing changes. For these reasons, Wisconsin requests that it be granted an extension of time until October 29, 1990.

NHTSA's Response to the Petition

NHTSA finds that Wisconsin has made reasonable efforts to achieve compliance with the Motor Vehicle Information and Cost Savings Act and the implementing regulations.

Since the enactment of the Truth of Mileage Act and the issuance of the implementing regulation, Wisconsin has reviewed its odometer and related motor vehicle consumer laws. Wisconsin plans to draft new legislation and submit this legislation for consideration by the legislature in late 1989. It will also redesign its title documents and make data processing changes.

In light of Wisconsin's past and planned actions, we grant Wisconsin's request for an extension of time until October 29, 1990, to revise its laws and its title documents to meet the Federal criteria.

Authority: 15 U.S.C. 1988 note; delegation of authority at 49 CFR 1.50(f) and 501.8(e)

Issued on April 11, 1989.

Erika Z. Jones,

Chief Counsel, National Highway Traffic Safety Administration.

[FR Doc. 89-9054 Filed 4-12-89; 8:45 am]

BILLING CODE 4910-59-M

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49 CFR Part 580

[Docket Number 87-09: Notice 4T]

Odometer Disclosure Requirements

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Grant of petition for extension of time (Vermont).

SUMMARY: This is in response to a petition for an extension of time filed by the Vermont Agency of Transportation, Department of Motor Vehicles, (Vermont). Vermont cannot conform its laws and its title documents to meet the requirements of the Truth in Mileage Act and the final rule implementing the Act by April 29, 1989, the effective date of the statutory and regulatory requirements. Therefore, the petition requests that NHTSA grant Vermont an extension of time, until July 1, 1990, to achieve compliance. Because Vermont has made an effort to meet the deadline, sets forth reasons why it has failed to do so, and has included a description of the steps to be taken while the extension is in effect, we have granted Vermont's petition for an extension of time. Vermont has until July 1, 1990 to revise its laws and its title documents to meet the requirements of the Truth in Mileage Act and the final rule.

FOR FURTHER INFORMATION CONTACT: Judith Kaleta, Office of the Chief Counsel, Room 5219, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202-366-1834).

SUPPLEMENTARY INFORMATION:

Background

Section 2(c) of the Truth in Mileage Act of 1986 authorizes the National Highway Traffic Safety Administration (NHTSA) to provide for an extension of time in the event that any State requires additional time beyond April 29, 1989, in revising its laws to meet the requirements of the Motor Vehicle Information and Cost Savings Act and the implementing regulations set forth in 49 CFR Part 580. It provides that, in granting an extension, NHTSA "shall ensure that the State is making reasonable efforts to achieve compliance."

To implement the Truth in Mileage Act and to make some needed changes in the Federal odometer laws, the agency published final rules which provide that a State may file a petition for an extension of time. The petition should discuss the efforts the State has taken to meet the deadline, the reasons why it needs additional time, the length of time desired for extension, and a description of the steps to be taken while the extension is in effect. 53 FR 29464 (1988).

Vermont's Petition

The Vermont Agency of Transportation, Department of Motor Vehicles, (Vermont) submitted a petition for an extension of time. In support of its petition, Vermont states that it is proposing changes to the Vermont statutes. More specifically, an amendment to the titling laws was introduced during the current legislative session. The amendment parallels the Federal statutory and regulatory requirements. In addition, Vermont states that it has reviewed its title documents. Vermont explains that although its titles are set forth by a secure printing process and include a space for the disclosure of odometer information, they do not meet all the new Federal regulatory requirements. The bill of sale forms are not currently printed by a secure process and need to include more disclosure information. Therefore, Vermont is designing a new title and bill of sale forms. Finally, Vermont has a one year supply of the title documents. For these reasons, Vermont requests that it be granted an extension of time until July 1, 1990.

NHTSA's Response to the Petition

NHTSA finds that Vermont has made reasonable efforts to achieve compliance with the Motor Vehicle Information and Cost Savings Act and the implementing regulations.

Since the enactment of the Truth in Mileage Act and the issuance of the implementing Federal regulations, Vermont has drafted legislation to amend the Vermont statutes. This legislation parallels the Federal statutory and regulatory requirements and was introduced during the current legislative session. Vermont has also reviewed its title documents and determined that additional information must be included on both the title and bill of sale forms. Therefore, Vermont is redesigning the title and bill of sale form to ensure compliance.

In light of Vermont's past and planned actions, and in order to allow Vermont to expend its current supply of titles documents, we grant Vermont's request for an extension of time until July 1, 1990, to revise its laws and its title documents to meet the Federal criteria.

Authority: 15 U.S.C. 1988 note; delegation of authority at 49 CFR 1.50(f) and 501.8(e).

Issued on April 11, 1989.

Erika Z. Jones,

Chief Counsel, National Highway Traffic Safety Administration.

[FR Doc. 89-9052 Filed 4-12-89; 1:56 pm]

BILLING CODE 4910-59-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Threatened Status for the Magazine Mountain Shagreen (Mesodon magazinensis)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines the Magazine Mountain shagreen (*Mesodon magazinensis*) to be a threatened species. The snail is found only on Magazine Mountain in Logan County, Arkansas, in a very restricted area and is vulnerable to any land use changes or management activities that may have an adverse effect on it or its habitat. This determination implements the protections provided by the Endangered Species Act (Act) of 1973, as amended.

EFFECTIVE DATE: May 17, 1989.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Jackson, Mississippi, Field Office, U.S. Fish and Wildlife Service, Jackson Mall Office Center, Suite 316, 300 Woodrow Wilson Avenue, Jackson, Mississippi 39213.

FOR FURTHER INFORMATION CONTACT: Mr. John J. Pulliam at the above address (601/965–4900 or FTS 490–4900).

SUPPLEMENTARY INFORMATION:

Background

The Magazine Mountain shagreen (*Mesodon magazinensis*) is a dusky brown, or buff colored, medium-sized snail, approximately 13 millimeters (mm) (0.5 inches) wide and 7 mm (0.3 inches) high. The rough shell surface is covered with half-moon, scale-like processes that can be seen with a hand lens. The outer lip of the aperture has a small triangular shaped tooth, the inner side has a blade-like tooth, and there is a small swelling on the basal lip near the center of the shell (Pilsbry and Ferriss 1906).

The Magazine Mountain shagreen was originally described as a subspecies of *Polygyra edentatus* (Pilsbry and Ferriss 1906). Pilsbry (1940) subsequently placed this snail into the genus *Mesodon* and elevated it to specific status. This species can be separated from *M. infectus*, a similar but widespread species also found on Magazine Mountain, by genitalia differences (Hubricht 1972) and a large maximum diameter of 12.7–14.0 mm (0.50–0.55 inches) for the former and 8.3–13.8 mm (0.33–0.54 inches) for the latter (R.S. Caldwell, Lincoln Memorial University, personal communication).

This snail is known only from rock slides on the north slope of Magazine Mountain in Logan County, Arkansas. A single dead specimen was found on the south slope of Magazine Mountain in 1903 (Pilsbry and Ferriss 1906), but this population has not been verified since that time (Caldwell 1986). Preferred habitat is found on approximately 60 percent slope between 600 meters (2,000 feet) and 790 meters (2,600 feet) elevation. Apparently this species prefers cool moist conditions. Therefore, the species moves deeper into the rock crevasses and becomes inaccessible for collection during the warm dry weather in July and August (Caldwell 1986). Because of its limited range, this snail would be vulnerable to any land use change or activities that would have an adverse effect on these rock slides. The species' entire range is within the Ozark National Forest and is classified as a Special Interest Area. The Mountain is being considered as a candidate for a Research Natural Area.

On April 28, 1976, the Service published a proposed rule (41 FR 17742) to determine 32 species of snails as endangered or threatened, including *Mesodon magazinensis*. The 1978 amendments to the Act required that all proposals over 2 years old be withdrawn if not finalized by November 1979. On December 10, 1979, the Service published a notice (44 FR 70796) withdrawing the proposal of April 28, 1976.

The Magazine Mountain middle-toothed snail (recently changed to Magazine Mountain shagreen) was included as a category 2 species in a notice of review of invertebrate wildlife for listing as endangered or threatened species on May 22, 1984 (49 FR 21664). Category 2 included taxa for which information then in possession of the Service indicated that proposing to list the species was possibly appropriate, but for which available data were not judged sufficient to support a proposed rule. In 1986, Dr. Ronald S. Caldwell completed a status survey on this species under contract to the Arkansas Nongame Species Preservation Program. The U.S. Forest Service, the U.S. Army Corps of Engineers, the Arkansas Game and Fish Commission, the Arkansas Division of State Parks, and the Logan County government are all aware of the rarity of this snail and are supportive of the proposal. There is a local concern for the effect listing the snail would have on the proposed development of a State Park on top of the Mountain. Certainly, the effect on the snail's habitat would have to be considered during any future developments or land use changes.

Summary of Comments and Recommendations

In the July 5, 1988, proposed rule (53 FR 25179) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices were published in the *Southwest Times Record*, Ft. Smith, Arkansas, on July 16, 1988, the *Booneville Democrat*, Booneville, Arkansas, on July 20, 1988, the *Paris Express-Progress*, Paris, Arkansas, on July 21, 1988, and the *Arkansas Gazette*, Little Rock, Arkansas, on July 25, 1988, which invited general public comment. Comments were received from only three parties, the Arkansas Natural Heritage Commission, the Arkansas Nature Conservancy, and the Arkansas Game and Fish Commission, all in support of the proposal. No public hearing was requested and none was held.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the Magazine Mountain shagreen should be classified as a threatened species. Procedures found at Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be endangered or threatened due to one or more of the five factors described in Section 4(a)(1). These factors and their application to the Magazine Mountain shagreen (*Mesodon magazinensis*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Because of the restricted range of the Magazine Mountain shagreen, it is vulnerable to any land use change or activity that would have an adverse effect on the rock slides where it is found. The Arkansas Department of Parks and Tourism has applied for a Special Use Permit from the Forest Service to develop a State Park on Magazine Mountain. Any construction or recreational activities, such as buildings, roads, pipelines, or trails, could have an

adverse effect on the snail if the rock slides on the north slope are disturbed. The U.S. Army would like to use the National Forest in this area for training exercises. If any troop movements, vehicle movements, or artillery operations affected the north slope, they also could have a negative impact on the snail. These activities, as well as forestry and recreational activities, represent potential threats, unless such activities are planned and conducted with the protection of the north slope of Magazine Mountain in mind. The Service has contacted the U.S. Forest Service, the Arkansas Department of Parks and Tourism, and the U.S. Army regarding protection needs of the Magazine Mountain shagreen.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Although it is difficult to collect this species during hot, dry periods, a knowledgeable collector could damage the population during a cool period following a rain. Therefore, collecting should be carefully controlled because of this species' rarity and limited range.

C. *Disease or predation.* There are no known diseases or predators that pose a significant threat to the snail.

D. *The inadequacy of existing regulatory mechanisms.* Other than the Special Interest Area designation by the U.S. Forest Service, there are no regulations in effect that provide protection for this species.

E. *Other natural or manmade factors affecting its continued existence.* The Magazine Mountain shagreen is a very rare snail, being found only on the north slope of Magazine Mountain where it is limited to rockslides at the foot of the cliff. It occurs in small numbers and is dependent on a cool, moist microhabitat.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list the Magazine Mountain shagreen as threatened. Since the species has a very restricted range, it is vulnerable to collecting and to any adverse habitat modification. Therefore, it seems appropriate to list the snail as threatened, defined as likely to become in danger of extinction within the foreseeable future throughout all or a significant portion of its range. Critical habitat is not being designated for the reasons discussed below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time. As discussed under Factor B in the "Summary of Factors Affecting the Species," uncontrolled collecting could be a problem. Publication of critical habitat descriptions would make this species even more vulnerable and increase enforcement problems. In addition, the entire range is in the Ozark National Forest and the U.S. Forest Service is aware of its presence. Protection of this species' habitat will also be addressed through the recovery process and through the Section 7 jeopardy standard. Therefore it would not be prudent to determine critical habitat for the Magazine Mountain shagreen at this time.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. The only Federal activities that may affect this species are any land use changes or activities adversely affecting the habitat, which is exclusively found on U.S. Forest Service land. The U.S. Army is interested in the area for training exercises. However, the north slope could be excluded from this activity.

The Act and implementing regulations found at 50 CFR 17.21 and 17.31 set forth a series of general prohibitions and exceptions that apply to all threatened wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving threatened wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22, 17.23, and 17.32. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. For threatened species, there are also permits for zoological exhibition, educational purposes, or special purposes consistent with the purposes of the Act. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship that would be suffered if such relief were not available.

The Service will review this species to determine whether it should be considered for placement on the appendices of the Convention on International Trade in Endangered Species of Wild Fauna and Flora and on the Annex of the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere.

National Environmental Policy Act

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

References Cited

Caldwell, R.S. 1986. Status of *Mesodon magazinensis* (Pilsbry and Ferriss), the Magazine Mountain Middle-toothed Snail.

Grant Number 84–1 for Arkansas Nongame Species Preservation Program. 18 pp.
Hubricht, L. 1972. The Land Snails of Arkansas. Sterkiana 46:15–16.
Pilsbry, H.A., and J. Ferriss. 1906. Mollusca of the Ozarkian Fauna. Proc. Acad. Nat. Sci., Philadelphia. 1906:529–567.
Pilsbry, H.A. 1940. Land Mollusca of North America (North of Mexico). Acad. Nat. Sci., Philadelphia, Monog. 3, 1(2):575–994.

Author

The primary author of this proposed rule is Mr. John J. Pulliam III (see **ADDRESSES** Section).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulation Promulgation

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

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

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411; Pub. L. 100–478, 102 Stat. 2306; Pub. L. 100–653, 102 Stat. 3825 (16 U.S.C. 1531 *et seq.*); Pub. L. 99–625, 100 Stat. 3500 unless otherwise noted.

2. Amend § 17.11(h) by adding the following, in alphabetical order under "SNAILS", to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
SNAILS							
Shagreen, Magazine Mountain.	*Mesodon magazinensis*	U.S.A. (AR)	NA	T	348	NA	NA

Dated: March 16, 1989.

Becky Norton Dunlop,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 89–3 Filed 4–14–89; 8:45 am]

BILLING CODE 4310–55–M

50 CFR Part 80

Federal Aid in Sport Fish Restoration and Federal Aid in Wildlife Restoration Act; Interest Earned from License Fees

AGENCY: Fish and Wildlife Service, Interior

ACTION: Final rule.

SUMMARY: On August 5, 1988, the U.S. Fish and Wildlife Service published a proposed rule in the **Federal Register** (53 CFR 29500) proposing that interest earned on revenues derived from license fees paid by hunters and fishermen be considered by the Secretary of the Interior as license fee revenue for purposes of the Federal Aid in Wildlife Restoration (Pittman-Robertson and Federal Aid in Sport Fish Restoration (Dingell-Johnson) Acts. It also clarified situations causing diversions, defined other assets acquired by license fees, and identified sources of license revenues affected by the proposed rule. This action requires States to use interest earned on hunting and fishing license revenues for fish and wildlife resource management as a condition to remain eligible to receive Federal Aid (Pittman-Robertson or Dingell-Johnson) funds.

EFFECTIVE DATE: Provisions of this rule will become effective on May 17, 1989 except that those States that will require legislative action to implement requirements relating to the disposition of interest revenues will be allowed up to three years from this date to get such authorization.

FOR FURTHER INFORMATION CONTACT: Conley Moffett, Chief, Division of Federal Aid, U.S. Fish and Wildlife Service, Washington, DC 20240, telephone (703) 235-1526.

SUPPLEMENTARY INFORMATION: Both the Federal Aid in Wildlife Restoration (16 U.S.C. 669, *et seq.*) and Federal Aid in Sport Fish Restoration (16 U.S.C. 777, *et seq.*) Acts contain provisions requiring that no money may be apportioned to a State unless that State has passed laws assenting to the provisions of the pertinent Act and has passed laws for conservation of wildlife and fish. Such laws must contain a prohibition against diversion of license fees paid by hunters and fishermen for any other purpose than the administration of the State fish and wildlife agency. This rule clarifies previously undefined Department of the Interior rules in accord with the generally-accepted principle that interest should accrue to principal from which it was generated.

The Federal Aid in Wildlife Restoration Act and Federal Aid in Sport Fish Restoration Act require that as a prerequisite to receiving federal funds, States must prevent diversions of license fees derived from fishermen and hunters to any purpose other than "the administration of said State game and fish department." The previous rule promulgated under authority of the Acts (50 CFR 80.4) stated that "[a] diversion of license fees occurs when a State fish and wildlife agency, through legislation or otherwise: (1) Loses control of the expenditure of any portion of its license revenues, or (2) Loses control of capital assets (or income therefrom) derived from license revenues * * *." Because of the increased complexity of State government and the variety of responsibilities assigned to fish and wildlife agencies, the requirements relating to control of assets and expenditures involve an increased number of controls at higher levels in the State. Accordingly, this new rule does not require that fish and wildlife agencies have complete control over license funds, but, instead, that license revenues must be used by State fish and wildlife agencies only to manage fish and wildlife resources that they have authority by the State law to manage.

The Department has determined that this rule is not a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act and, therefore, the preparation of an Environmental Impact Statement is not required.

This rule is not a major rule under Executive Order 12291 and will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5

U.S.C. 601). The annual effect on the economy will be less than the threshold required for a major rule, no major increase in costs or prices will occur, and no significant effects on competition, employment, investment, productivity, innovation are expected. This rule does not contain any recordkeeping or information collection requirements requiring Office of Management and Budget approval under the Paperwork Reduction Act of 1980.

This rule was published as a proposed rule on August 5, 1988 (53 CFR 29500) and comments were invited until September 19, 1988. A total of 44 comments were received; 18 from State fish and wildlife agencies, 19 from State conservation organizations, 6 from National conservation organizations, and 1 from a private citizen. Of the 44 comments, 3 States expressed opposition to the portion that related to the requirement that interest earned on license revenues be regarded as license revenues. No negative comments were received from the other groups.

The 3 States expressed concern that claiming money derived from interest would jeopardize their existing appropriations from the general fund or that they would be assessed higher costs for State overhead than they are presently foregoing and that the rule would require the cost of additional accounting. We recognized that the rules could have negative impacts on several States but judged that significantly greater numbers of States would benefit from it. Income from interest had become a significant source of revenue for most agencies. The Wildlife Conservation Fund of America survey of 1987 shows that the number of States receiving interest from license revenues has increased from 18 to 36 in the 7 year period from the prior survey to the last one in 1986. The total interest was about 22 million dollars in 1986.

Many commentors asked for clarification of the effective date. The effective date of this revision is 30 days after publication in the **Federal Register.** However, it is recognized that some States may need to enact legislation to meet the requirements of this provision. Therefore, for those States a period not to exceed 3 years after the effective date of the rule will be allowed in order to enact the needed legislation. All other States will need to be in compliance, and remain in compliance, on or after the effective date. The 3 year period was generally accepted by most commentors.

Most of the State conservation organizations suggested that income derived from license revenue funded law enforcement activities such as fines, penalties, and sales of confiscated equipment be defined as license revenues for purposes of this rule. This suggestion was not adopted because it was judged that the Secretary was not given this authority by legislation.

Commentors also suggested that fees charged on recreation areas that are managed by the State using license revenues such as camping, boat launching, and parking be included in the term "access fees" in section (a)(1). The final rule had been changed to "access and recreation fees" to clarify this intent.

Some commentors suggested that the proceeds of leases of lands be treated as license revenues like the sale of lands. That suggestion was incorporated in section (a)(2).

The principal author of this proposal is Thomas W. Taylor, Division of Federal Aid, U.S. Fish and Wildlife Service.

List of Subjects in 50 CFR Part 80

Fish grant program, Natural Resources, Grant administration, and wildlife.

Accordingly, 50 CFR 80 is amended as follows:

PART 80—[AMENDED]

1. Authority for 50 CFR 80 continues to read as follows:

Authority: Federal Aid in Sport Fish Restoration Act (16 U.S.C. 777i) and Federal Aid in Wildlife Restoration Act (16 U.S.C. 669i).

2. Part 80 is amended by revising § 80.4 to read as follows:

§ 80.4 Diversion of license fees.

Revenues from license fees paid by hunters and fishermen shall not be diverted to purposes other than administration of the State fish and wildlife agency.

(a) Revenues from license fees paid by hunters and fishermen are any revenues the State receives from the sale of licenses issued by the State conveying to a person the privilege to pursue or take wildlife or fish. For the purpose of this rule, revenue with respect to license sales by vendors, is considered to be the net income to the State after deducting reasonable vendor fees or similar amounts retained by sales agents. License revenues include income from:

(1) General or special licenses, permits, stamps, tags, access and recreation fees or other charges imposed by the State to hunt or fish for sport or recreation.

(2) Sale, lease, rental, or other granting of rights of real or personal property acquired or produced with license revenues. Real property includes, but is not limited to, lands, building, minerals, energy resources, timber, grazing, and animal products. Personal property includes, but is not limited to, equipment, vehicles, machine, tools, and annual crops.

(3) Interest, dividends, or other income earned on license revenues.

(4) Federal Aid project reimbursements to the States to the extent that license revenues originally funded the project for which the reimbursement is being made.

(b) For purposes of this rule, administration of the State fish and wildlife agency include only those functions required to manage the fish and wildlife-oriented resources of the State for which the agency has authority under State law.

(c) A diversion of license fee revenues occurs when any portion of license revenues is used for any purpose other than the administration of the State fish and wildlife agency.

(d) If a diversion of license revenues occurs, the State becomes ineligible to participate under the pertinent Act from the date the diversion is declared by the Director until:

(1) Adequate legislative prohibitions are in place to prevent diversion of license revenue, and

(2) All license revenues or assets acquired with license revenues are restored, or an amount equal to license revenue diverted or current market value of assets diverted (whichever is greater) is returned and properly available for use for the administration of the State fish and wildlife agency.

(e) Federal funds obligated for projects approved prior to the date a diversion is declared remain available for expenditure on such projects without regard to the intervening period of the State's ineligibility.

Date: February 17, 1989.

Becky Norton Dunlop,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 89-9089 Filed 4-14-89; 8:45 am]

BILLING CODE 4310-55-M

Proposed Rules

Federal Register
Vol. 54, No. 72
Monday, April 17, 1989

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 27 and 28

[CN-89-001]

Revisions of User Fees for Cotton Classification, Testing and Standards

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Agricultural Marketing Service (AMS) proposes to increase the user fees charged to cotton producers for classification services under the Cotton Statistics and Estimates Act in accordance with the forumla provided in the Uniform Cotton Classing Fees Act of 1987. The 1989 user fee for this classification service would be $1.23 per bale.

Fees charged for cotton classification services under the U.S. Cotton Standards Act would also be increased. Fees charged for the purchase of American Upland, American Pima and linters grade and staple standards would also be increased. The proposed higher fees for these classification and testing services and for standards and calibration cottons are necessary to recover, as nearly as practicable, the increased costs of providing such services including administrative and supervisory costs.

DATE: Comments must be received by May 15, 1989.

ADDRESS: Comments and inquiries should be addressed to Garry L. Lewicki, Cotton Division, AMS, USDA, Room 2641–S, P.O. Box 96456, Washington, DC 20090–6456.

FOR FURTHER INFORMATION CONTACT: Garry L. Lewicki, (202) 447–2145.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed in accordance with Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be "non-major" since it does meet the criteria for a major regulatory action as stated in the order.

The Administrator, Agricultural Marketing Service (AMS), has certified that this action will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because: (1) The proposed fee increases merely reflect a minimal increase in the cost-per-unit currently borne by those entities utilizing the services; (2) the cost increase will not affect competition in the marketplace; (3) the use of classification and testing services and the purchase of standards is voluntary.

The information collection requirements contained in this final rule have been previously approved by the Office of Management and Budget and assigned OMB control numbers under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

It is anticipated that the proposed changes, if adopted, would be made effective July 1, 1989.

Fees for the Classification Under the Cotton Statistics and Estimates Act of 1927

The user fee charged to cotton producers for manual classification services under the Smith-Doxey amendment to the Cotton Statistics and Estimates Act (7 U.S.C. 473a) was $1.03 during the 1988 harvest season (53 FR 20089) as determined using the formula provided in the Uniform Cotton Classing Fees Act of 1987. The charges cover salaries, cost of equipment and supplies, and other overhead and include administrative and supervisory costs. This proposed rule would increase user fee for manual classification charged to producers from $1.03 per bale to $1.23 per bale. This new fee was calculated by using the 1988 base fee adjusted for the rate of inflation, the projected size of the crop and the addition of a surcharge necessary to maintain an adequate operating reserve. The 1988 base fee is $1.15 per bale. A 4.1 percent, or five cents per bale, increase due to the Implicit Price Deflator of the Gross National Product would be added to the $1.15 resulting in a 1989 base fee of $1.20 per bale. The 1989 crop is currently estimated at 12,700,000 running bales. The base fee would be decreased two percent based on the estimated size of the crop (one percent for every 100,000 bales or portion thereof above the base of 12,500,000 bales). This percentage factor would amount to a two cents per bale reduction and would be subtracted from the base fee of $1.20 per bale resulting in a fee of $1.18 per bale. There would be a surcharge of five cents added to the $1.18 per bale fee since the projected operating reserve is less than 25 percent. The projected operating reserve is 16 percent. This would establish the 1989 season fee at $1.23 per bale. No further adjustments would be warranted under the formula.

Therefore, the fee for this service in § 28.909 during the 1989 harvest season would be $1.23 per bale. The additional fee for High Volume Instrument (HVI) classification would remain 50 cents per bale and the fee for HVI classification during the 1989 harvest season would be revised to $1.73 per bale. As provided for in the Uniform Cotton Classing Fees Act of 1987, a 5 cent per bale discount would continue to be applied to voluntary centralized billing and collecting agents.

The fee for a manual review classification in § 28.911 would also be increased from $1.03 to $1.23 per bale since the fee for review classification is the same as the original classification fee. For the same reason the fee for HVI review classification would be increased from $1.53 to $1.73 per bale.

Fees for Cotton Standards

Practical forms of the cotton standards are prepared and sold by the Cotton Division offices in Memphis, Tennessee, under the authority of the United States Cotton Standards Act (7 U.S.C. 51 *et seq.*). The Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35) directs that the price for standards will cover, as nearly as practicable, the costs of providing the standards.

This proposal would increase the fees listed in §§ 28.123 and 28.151 for practical forms of the cotton standards, including both grade and staple standards for American Upland cotton, American Pima cotton and for cotton linters. The fees need to be adjusted due to increased costs for salaries and preparation, delivery, and postage of the standards. Current and estimated demand for the standards has also been factored into the fee revision since per unit costs are directly related to volume.

The fees for American Upland cotton grade standards would be increased

from $100.00 to $110.00 f.o.b. Memphis, Tennessee, or overseas air freight collect. The price would be increased from $104.00 to $114.00 for domestic surface delivery and from $140.00 to $150.00 for overseas air parcel post delivered. The fees for American Upland staple standards f.o.b. Memphis and overseas airfreight collect would increase from $14.00 to $16.00. The domestic surface delivered fee would increase from $16.00 to $18.00 and the overseas air parcel post delivered fee would increase from $28.00 to $30.00. The fees for American Pima grade standards would increase from $126.00 to $140.00 f.o.b. Memphis or overseas air freight collect. The price would increase from $130.00 to $144.00 for domestic surface delivered and from $166.00 to $180.00 for overseas air parcel post delivered. Fees for American Pima staple standards would increase from $15.00 to $17.00 for f.o.b. Memphis and overseas air freight collect. The domestic surface delivered fee would increase from $17.00 to $19.00 and the overseas air parcel post delivered fee would increase from $29.00 to $31.00. The fees for linters grade strandards would be increased from $100.00 to $110.00 f.o.b. Memphis or overseas air freight collect. The price for domestic surface delivery would increase from $104.00 to $114.00 and the price for overseas air parcel post delivery would increase from $140.00 to $150.00. The f.o.b. Memphis or overseas air freight collect fees for linters staple standards would increase from $16.00 to $18.00. The delivered price would increase from $18.00 to $20.00 for domestic and from $30.00 to $32.00 for overseas air parcel post.

Fees for Classification Services Under the United States Cotton Standards Act

Certain other cotton classification services are conducted under the United States Cotton Standards Act. Fees for these services have been reviewed. In order to recover increased costs, including supervision and overhead, it is proposed that the fees for classification of cotton or samples in § 28.116 be increased: for grade, staple and micronaire readings from $1.30 per sample to $1.45; for grade and staple only from $1.15 per sample to $1.25; and for grade only or staple only from $.90 to $1.00.

The fee in § 28.117 for each new memorandum or certificate issued in substitution for a prior one would increase from $4.00 per sheet to $4.50. The additional hourly fee charged for Form C determinations in §§ 28.120 and 28.149 would increase from $18.00 per hour or each portion thereof to $20.00 per hour, or each portion thereof, plus traveling expenses and subsistence or per diem. The fee in § 28.122 for a complete practical classing examination for cotton or cotton linters would increase from $125.00 to $135.00 and the fee for reexamination for a failed part, either grade or staple, would increase from $75.00 to $80.00. Fees for the classification, comparison, or review of linters in § 28.148 would increase from $1.20 to $1.30 per bale or sample involved. In § 28.148, the fee for classification or comparison of cotton linters and the issuance of a memorandum would increase from $1.20 to $1.30 per sample.

The United States Cotton Futures Act (7 U.S.C. 15b) authorizes the Secretary to make such regulations as are necessary to carry out the provisions of that Act. Pursuant to that authority, Part 27 of the regulations (7 CFR Part 27) provides for cotton classification under the Cotton Futures Act including fees to recover the costs of classification and micronaire. Under this proposal, the fees charged for the services would be increased to cover the costs of providing such services, including overhead costs.

These fees have been reviewed and it is proposed that the fees in § 27.80 for initial classification be increased from $1.20 per bale to $1.30 per bale; for review classification to be increased from $1.40 per bale to $1.50 per bale. All supervision fees would be increased by 20 cents. Pursuant to § 27.85, fees for withdrawal of requests or applications for review, after such services have been started, are the same as the fees in § 27.80 for services completed, so such charges would be affected by this proposal. Fees for certificates which appear in § 27.81 would increase from 60 cents to 65 cents per certificate.

Testing Services

Cotton testing services are provided by USDA Laboratory in Clemson, South Carolina under the authority of the Cotton Statistics and Estimates Act of 1927 (7 U.S.C. 471–478). The tests are available, upon request, to private sources on a fee basis. The Cotton Service Testing Amendment (7 U.S.C. 473d) specifies that the fees for the services be reasonable and cover as nearly as practicable the costs of rendering the services. The cost of providing these services has increased since the last fee increase in 1987 due to higher costs for salaries and miscellaneous overhead costs including supplies and materials. Therefore, the fees for cotton testing services would be increased to recover, as nearly as practicable, the cost of these services.

The fees for fiber and processing tests in § 28.956, except items 1.0, 5.0, 7.0, 7.1, 8.0, 8.1, 9.0, 15.0, 18.0, and 19.0 will be increased.

The proposed fees are as follows:

Item No.	Current Fee	Proposed
1.0a	84.00	84.00
b	88.00	88.00
c	84.00	84.00
d	124.00	124.00
2.0a	15.00	17.00
b	16.00	18.00
c	15.00	17.00
d	25.00	27.00
2.1a	23.00	25.00
b	25.00	27.00
c	23.00	25.00
d	37.00	39.00
3.0	95.00	105.00
3.1	15.00	17.00
4.0	25.00	30.00
4.1	12.00	15.00
5.0	1.60	1.60
6.0	1.08	1.10
7.0	8.50	8.50
7.1	5.50	5.50
8.0	8.75	8.75
8.1	5.50	5.50
9.0a	8.75	8.75
b	6.50	6.50
c	5.50	5.50
10.0	0.55	0.65
10.1	0.30	0.35
11.0	10.00	12.00
Minimum	50.00	60.00
12.0	6.00	6.50
13.0a	65.00	70.00
b	103.00	108.00
c	125.00	130.00
13.1a	48.00	52.00
b	70.00	74.00
c	97.00	101.00
13.2	117.00	122.00
14.0a	22.00	24.00
b	27.00	29.00
c	32.00	34.00
15.0a	7.50	7.50
b	13.00	13.00
16.0	14.00	15.00
17.00	4.50	5.00
Minimum	22.50	25.00
18.0	25.00	25.00
19.0	80.00	80.00
20.0	105.00	110.00
20.1	80.00	85.00
21.0	95.00	100.00
22.0	140.00	145.00
23.0	200.00	210.00
24.0	220.00	230.00
25.0	29.00	31.00
25.1	40.00	42.00
26.0a	75.00	80.00
b	22.00	23.00
27.0	11.00	12.00
28.0	4.50	5.00
28.1	6.50	7.50
29.0	17.00	18.00
29.1	29.00	31.00
30.0	12.00	14.00
Minimum	36.00	42.00
31.0	2.50	3.00
32.0	3.00	3.50
33.0	1.10	1.25
33.1	12.00	15.00

It has been determined that a 15 day comment period is appropriate for interested persons to comment on this proposed regulatory revision because all

user fee increases in the revision are required by the Acts governing the services, and the new user fee charged to producers for the classification of cotton must be announced by June 1, 1989, as provided in the Uniform Cotton Classing Fees Act of 1987. The new user fee charged to cotton producers was calculated in accordance with the Uniform Cotton Classing Fees Act of 1987 and includes the maximum 1 percent decrease for every 100,000 bales of the crop estimate over the 12,500,000 base level cited in the Act. Other user fee increases in the revision reflect fees needed to recover the costs of providing these services as are required in the Acts governing these services.

List of Subjects

7 CFR Part 27

Cotton, Classification, Samples, Micronaire, Spot markets.

7 CFR Part 28

Cotton samples, Standards, Cotton linters, Grades, Staples, Market news, Testing.

For the reasons set forth in the preamble, the following amendments to 7 CFR Parts 27 and 28 are proposed to be amended as follows:

PART 27—[AMENDED]

1. The authority citation for Part 27 continues to read as follows:

Authority: 90 Stat. 1841–1846; 7 U.S.C. 15b.

2. Sections 27.80 and 27.81 would be revised to read as follows:

§ 27.80 Fees; classification, micronaire, and supervision.

For services rendered by the Cotton Division pursuant to this subpart, whether the cotton involved in tenderable or not, person requesting the services shall pay fees as follows:

(a) Initial classification and ceretification—$1.30 per bale.

(b) Review classification and certification—$1.50 per bale.

(c) Micronaire determination and certification—30 cents per bale.

(d) Combination service—$2.80 per bale. (Initial classification, review classification, and Micronaire determination covered by the same request and only the review classification and Micronaire determination results certified on cotton class cerificates.)

(e) Supervision, by a supervisor of cotton inspection, of the inspection, weighing, or sampling of a cotton when any two or more of these operations are performed together—$1.55 per bale.

(f) Supervision, by a supervisor of cotton inspection, of the inspection, weighing, or sampling of cotton when any one of these operations is performed individually—$1.55 per bale.

(g) Supervision, by a supervisor of cotton inspection, of transfers of cotton to a different delivery point, including issuance of new cotton class certificates in substitution for prior certificates—$2.65 per bale.

(h) Supervision, by a supervisor of cotton inspection, of transfers of cotton to a different warehouse at the same delivery point, including issuance of new cotton class certificates in substitution for prior certificates—$1.90 per bale.

§ 27.81 Fees; certificates.

For each new certificate issued in substitution for a prior certificate at the request of the holder thereof, for the purpose of business convenience, or when made necessary by the transfer of cotton under the supervision of any exchange inspection agency as provided in § 27.73, the person making the request shall pay a fee of 65 cents for each certificate issued.

PART 28—[AMENDED]

3. The authority citation for Subpart A of Part 28 continues to read as follows:

Authority: Sec. 5, 50 Stat. 62, as amended (7 U.S.C. 55); Sec. 10, 42 Stat. 1519 (7 U.S.C. 61).

4. Section 28.116 would be amended by revising paragraph (a) to read as follows:

§ 28.116 Amounts of fees for classification; exemption.

(a) For the classification of any cotton or samples, the person requesting the sevices shall pay a fee, as follows, subject to the additional fee provided by paragraph (c) of this section.

(1) Grade, staple, and micronaire reading—$1.45 per sample.

(2) Grade, staple only—$1.25 per sample.

(3) Grade only or staple only—$1.00 per sample.

* * * * *

5. Sections 28.117, 28.120, and 28.122 would be revised to read as follows:

§ 28.117 Fee for new memorandum or certificate.

For each new memorandum or certificate issued in substitution for a prior memorandum or certificate at the request of the holder, thereof, on account of the breaking or splitting of the lot of cotton covered thereby or otherwise for his business convencience, the person requesting such substitution shall pay a fee of $4.50 per sheet.

§ 28.120 Expenses to be borne by party requesting classification.

For any samples submitted for Form A or Form D determination, the expenses of inspection and sampling, the preparation of the samples and delivery of such samples to the classification room or other place specifically designated for the purpose by the Director shall be borne by the party requesting classification. For samples submitted for Form C determinations, the party requesting the classification shall pay the fees prescribed in this subpart and, in addition, a fee of $20.00 per hour, or each portion thereof, plus the necessary traveling expenses and subsistence, or per diem in lieu of subsistence, incurred on account of such request, in accordance with the fiscal regulations of the Department applicable to the Division employee supervising the sampling.

§ 28.122 Fee for practical classing examination.

The fee for the complete practical classing examination for cotton or cotton linters shall be $135.00. Any applicant who passes both parts of the examination may be issued a certificate indicating this accomplishment. Any person who passes one part of the examination, either grade or staple, and fails to pass the other part, may be reexamined for that part that was failed The fee for this practical reexamination is $80.00.

6. Section 28.123 would be revised to read as follows:

§ 28.123 Cost of practical forms of cotton standards.

The costs of practical forms of the cotton standards of the United States shall be as follows:

Effective date: July 1, 1989	Dollars each box or roll			
	Domestic shipments		Shipments delivered outside the continental United States	
	F.O.B. Memphis, Tenn.	Surface delivery	Air freight collect	Air parcel post delivered
Grade standards:				
American Upland	$110.00	$114.00	$110.00	$150.00
American Pima	140.00	144.00	140.00	180.00
Standards for length of staple:				
American Upland (prepared in one 1-pound rolls for each length)	16.00	18.00	16.00	30.00
American Pima (prepared in 1-pound rolls for each length)	17.00	19.00	17.00	31.00

7. Sections 28.148 and 28.149 would be revised to read as follows:

§ 28.148 Fees and costs; classification; review; other.

The fee for the classification, comparison, or review of linters with respect to grade, staple, and character or any of these qualities shall be at the rate of $1.30 for each bale or sample involved. The provisions of §§ 28.115 through 28.126 relating to other fees and costs shall, so far as applicable apply to services performed with respect to linters.

§ 28.149 Fees and costs; Form C determination.

For samples submitted for Form C determinations, the party requesting the classification shall pay the fees prescribed in this subpart and, in addition a fee of $20.00 per hour, or each portion thereof, plus the necessary traveling expenses and subsistence, or per diem in lieu of subsistence, incurred on account of each request, in accordance with the fiscal regulations of the Department applicable to the Division employee supervising the sampling.

8. Section 28.151 would be revised to read as follows:

§ 28.151 Cost of practical forms for linters, period effective.

Practical forms of the official cotton linters standards of the United States will be furnished to any person subject to the applicable terms and conditions specified in § 28.105; *Provided*, that no practical form of any of the official cotton linters standards of the United States for grade shall be considered as representing any such standards after the date of its cancellation in accordance with this subpart, or, in any event, after the expiration of 12 months following the date of its certification. The cost of the practical forms of cotton linters standards of the United States shall be as follows:

Effective date: July 1, 1989	Dollars each box or roll			
	Domestic shipments		Shipments delivered outside the continental United States	
	F.O.B. Memphis, Tenn.	Surface delivery	Air freight collect	Air parcel post delivered
Linters grade standards: (6 sample box for each grade	$110.00	$114.00	$110.00	$150.00
Linters staple standards: (prepared in 1-one pound rolls for each length)	18.00	20.00	18.00	32.00

9. The authority citation of Subpart B of Part 28 continues to read as follows:

Authority: Sec. 205, 60 Stat. 1090, as amended (7 U.S.C. 1624).

10. Section 28.184 would be revised to read as follows:

§ 28.184 Cotton Linters; general.

Requests for the classification or comparison of cotton linters pursuant to this subpart and the samples involved shall be submitted to the Cotton Division. All samples classed shall be on the basis of the official cotton linters standards of the United States. The fee for classification or comparison and the issuance of a memorandum showing the results of such classification or comparison shall be $1.30 per sample.

11. The authority citation for Subpart D of Part 28 continues to read as follows:

Authority: Sec. 3a, 50 Stat. 62, as amended (7 U.S.C. 473a); Sec. 3c, 50 Stat. 62 (7 U.S.C. 473c); unless otherwise noted.

12. Paragraph (b) of § 28.909 would be revised to read as follows:

§ 28.909 Costs.

* * * * *

(b) The cost of manual cotton classification service to producers is $1.23 per sample.

* * * * *

13. Paragraph (b) of § 28.910 would be amended by revising it to read as follows:

§ 28.910 Classification of samples and issuance of classification data.

* * * * *

(b) Upon request of an owner of cotton for which classification memoranda have been issued under this subpart, a new memorandum shall be issued for the business convenience of such owner without the reclassification of the cotton. Such rewritten memorandum shall bear the date of its issuance and the date or inclusive dates of the original classification. The fee for a new memorandum shall be $4.50 per sheer.

14. Section 28.911 would be amended by revising it to read as follows:

§ 28.911 Review classification.

A producer may request one manual or one High Volume Instrument (HVI) review classification for each bale of eligible cotton. The fee for manual review classification is $1.23 per sample. The fee for HVI review classification is $1.73 per sample. Samples for review classification must be drawn by gins or

warehouses licensed pursuant to § 28.20–28.22, or by employees of the United States Department of Agriculture. Each sample for reveiw classification shall be taken, handled, and submitted according to § 28.908 and to supplemental instructions issued by the Director or an authorized representative of the Director. Costs incident to sampling, tagging, identification, containers, and shipment for samples for review classification shall be assumed by the producer. After classification, the samples shall become the property of the Government unless the producer requests the return of the samples. The proceeds from the sale of samples that become Government property shall be used to defray the costs of providing the services under this subpart. Producers who request return of their samples after classing will pay a fee of 30 cents per sample in addition to the fee established above in this section.

15. The authority citation for Subpart E of Part 28 continues to read as follows:

Authority: Sec. 3c, 50 Stat. 62; 7 U.S.C. 473c; Sec. 3d, 55 Stat. 131 (7 U.S.C. 473d).

16. Section 28.956 would be amended by revising it to read as follows:

§ 28.956 Prescribed fees.

Fees for fiber and processing tests shall be assessed as listed below:

Item No.	Kind of test	Fee per test
1.0	Calibration cotton for use with High Volume Instruments, per 5 pound package:	
	a. f.o.b. Memphis, Tennessee	$84.00
	b. By surface delivery within continental United States	88.00
	c. By air freight collect outside continental United States	84.00
	d. By air parcel post delivery outside continental United States	124.00
2.0	Furnishing international calibration cotton standards with standard values for micronaire reading and fiber strength at zero and ⅛-inch gage and Fibrograph length:	
	a. f.o.b. Memphis Tennessee, ½-lb. sample	17.00
	b. By surface delivery within continental United States, ½-lb. sample	18.00
	c. By air freight collect outside continental United States, ½-lb. sample	17.00
	d. By air parcel post delivery outside continental United States, ½-lb. sample	27.00
2.1	Furnishing international calibration cotton standards with standards values for micronaire reading only:	
	a. f.o.b. Memphis Tennessee, 1-lb. sample	25.00
	b. Surface delivery within continental United States, 1-lb. sample	27.00
	c. By air freight collect outside continental United States, 1-lb. sample	25.00
	d. By air parcel post delivery outside continental United States, 1-lb. sample	39.00
3.0	Furnishing color standards, including a set of standard tiles and a master diagram for use in calibrating Nickerson-Hunter Cotton Colorimeters, per set.	105.00
3.1	Furnishing replacement calibration tiles for above sets, each tile.	17.00
4.0	Furnishing a Colorimeter calibration sample box containing 6 cotton samples with color values Rd and +b plotted on a color diagram based on the Nickerson-Hunter Cotton Colorimeter, per box.	30.00
4.1	Furnishing new Colorimeter readings on samples in calibration boxes returned for check readings, per 6-sample box.	15.00
5.0	High Volume Instrument (HVI) measurement. Readings micronaire, length, length uniformity, ⅛-inch gage strength, color and trash content. Based on a 6 oz. (170 g) sample, per sample.	1.60
6.0	Color of ginned cotton lint. Reporting data on the reflectance and yellowness in terms of Rd and b values as based on the Nickerson-Hunter Cotton Colorimeter on samples which measure 5×6-½ inches and weigh appropriately 50 grams, per sample.	1.10
7.0	Fiber length of ginned cotton lint by Fibrograph method. Reporting the average length and average length uniformity as based on 4 specimens from a blended sample, per sample.	8.50
7.1	Fiber length of ginned cotton lint by Fibrograph method. Reporting the average length and average length uniformity as based on 2 specimens from each unblended sample.	5.50
8.0	Pressley strength of ginned cotton lint by flat bundle method for either zero or ⅛-inch gage as specified by applicant. Reporting the average strength as based on 6 specimens from a blended sample, per sample.	8.75
8.1	Pressley strength of ginned cotton lint by flat bundle method for either zero or ⅛-inch gage as specified by applicant. Reporting the strength as based on 2 specimens for each unblended sample, per sample.	5.50
9.0	Stelometer strength and elongation of ginned cotton lint by the flat bundle method for ⅛-inch gage. Reporting the average strength and elongation:	
	a. Based on 6 specimens from each blended sample, per sample	8.75
	b. Based on 4 specimens from each blended sample, per sample	6.50
	c. Based on 2 specimens from each blended sample, per sample	5.50
10.0	Micronaire readings on ginned lint. Reporting the micronaire based on 2 specimen per sample.	.65
10.1	Micronaire reading based on 1 specimen per sample.	.35
11.0	Fiber maturity and fineness of ginned cotton lint by the Causticaire method. Reporting the average maturity, fineness, and micronaire reading as based on 2 specimens from a blended sample, per sample.	12.00
	Minimum fee	60.00
12.0	Fiber fineness and maturity of ginned cotton lint by the IIC-Shirley Fineness/Maturity Tester method, reporting the average micronaire, maturity ratio, percent mature fibers and fineness (linear density) based on 2 specimens from a blended sample, per sample.	6.50
13.0	Fiber length array of cotton samples. Reporting the average percentage of fibers by weight in each ⅛-inch group, average length and average length variability as based on 3 specimens from a blended sample:	
	a. Ginned cotton lint, per sample	70.00
	b. Cotton comber noils, per sample	108.00
	c. Other cotton wastes, per sample	130.00
13.1	Fiber length array of cotton samples. Reporting the average percentage of fibers by weight in each ⅛-inch group, average length, and average length variability as based on 2 specimens from a blended sample	
	a. Ginned cotton lint, per sample	52.00
	b. Cotton comber noils, per sample	74.00
	c. Other cotton wastes, per sample	101.00
13.2	Fiber Length array of cotton samples, including purified or absorbent cotton. Reporting the average percentage of fibers by weight in each ⅛-inch group, average length and average length variability as based on 3 specimens from a blended sample, per sample	122.00

Item No.	Kind of test	Fee per test
14.0	Fiber Length and Length Distribution of cotton samples by the Almeter method. Reporting the upper 25 percent length, mean length, coefficient of variation, and short fiber percentages by weight, number of tuft in each ⅛-inch group, as based on 2 specimens from a blended sample	
	a. Report percentages of fiber by weight only	24.00
	b. Report percentages of fiber by weight and number or tuft	29.00
	c. Report percentages of fiber by weight, number and tuft	34.00
15.0	Foreign matter content of cotton samples. Reporting data on the non-lint content as based on the Shirley Analyzer separation of lint and foreign matter:	
	a. For samples of ginned lint or comber noils, per 100-gram specimen	7.50
	b. For samples of ginning and processing wastes other than comber noils, per 100-gram specimen	13.00
16.0	Neps content of ginned cotton lint. Reporting the neps per 100 square inches as based on the web prepared from a 3-gram specimen by using accessory equipment with the mechanical fiber blender, per sample.	15.00
17.0	Sugar content of cotton. Reporting the percent sugar content as based on a quantitative analysis of reducing substances (sugars) on cotton fibers, per sample.	5.00
	Minimum fee	25.00
18.0	Miniature carded cotton spinning test. Reporting data on tenacity (centinewtons per tex) of 22's yarn and HVI data (see Item 5.0). Based on the processing of 50 grams of cotton in accordance with special procedures per sample.	25.00
19.0	Two-pound cotton carded yarn spinning test available to cotton breeders only. Reporting data on yarn skein strength, yarn appearance, yarn neps and the classification and the fiber length of the cotton as well as comments on any unusual processing performance as based on the processing of 2 pounds of cotton in accordance with standard procedures into two standard carded yarn numbers employing a standard twist multiplier, per sample.	80.00
20.0	Cotton carded yarn spinning test. Reporting data on waste extracted, yarn skein strength, yarn appearance, yarn neps and classification, and fiber length as well as comments summarizing any unusual observations as based on the processing of 6 pounds of cotton in accordance with standard laboratory procedures at one of the standard rates of carding of 6-½, 9-½, or 12-½ pounds-per-hour into two of the standard carded yarn number of 8s, 14s, 22s, 36s, 44s, or 50s, employing a standard twist multiplier unless otherwise specified, per sample.	110.00
20.1	Cotton carded yarn spinning test (open-end) for short staple (31/32nd inches and shorter) cottons. Reporting data on waste extracted, yarn skein strength, yarn appearance, yarn neps, and classification and fiber length as well as comments summarizing any unusual observations as based on the processing of 6 pounds of cotton in accordance with standard laboratory procedures at a carding rate of 12-½ pounds-per-hour into 8's using a silver weight of 60 grains per yard; a rotor speed of 45,000 RPM; and opening roll speed of 7,200 RPM; a twist multiple of 4.5; and rotor diameter of 46 millimeters.	85.00
21.0	Spinning potential tests. Determining the finest yarn which can be spun with no ends down and reporting spinning potential yarn number. This test requires an additional 4 pounds of cotton, per sample.	100.00
22.0	Cotton combed yarn spinning test. Reporting data on waste extracted, yarn skein strength, yarn appearance, yarn neps, and classification and fiber length as well as comments summarizing any unusual observations as based on the processing of 8 pounds of cotton in accordance with standard procedures at one of the standard rates of carding of 4-½, 6-½, or 9-½ pounds-per-hour into two of the standard combed yarn numbers of 22s, 36s, 44s, 50s, 60s, 80s, or 100s employing a standard twist multiplier unless otherwise specified, per sample.	145.00
23.0	Cotton carded and combed yarn spinning test. Reporting the results as based on the processing of 10 pounds of cotton into two of the standard carded and two of the standard combed yarn numbers employing the same carding rate and the same yarn numbers for both the carded and the combed yarns, per sample.	210.00
24.0	Cotton carded and combed yarns spinning test. Reporting the results as based on the processing of 9 pound of cotton into two of the standard combed yarn numbers employing different carding rates and/or yarn numbers for the carded and combed yarns, per sample.	230.00
25.0	Processing and testing of additional yarn. Any carded or combed yarn number processed in connection with spinning tests including either additional yarn numbers or additional twist multipliers employed on the same yarn numbers, per additional lot of yarn.	31.00
25.1	Processing and furnishing of additional yarn: Any yarn number processed in connection with spinning tests. Approximately 300 yards on each of 16 paper tubes for testing by the applicant, per additional lot of yarn.	42.00
26.0	Twist in yarns by direct-counting method. Reporting direction of twist and average turns per inch of yarn:	
	a. Single yarns based on 40 specimens, per lot of yarn	80.00
	b. Plied or cabled yarns based on 10 specimens, per lot of yarn	23.00
27.0	Skein strength of yarn. Reporting data on the strength and the yarn numbers based on 25 skeins from yarn furnished by the applicant, per sample.	12.00
28.0	Appearance grade of yarn furnished on bobbins by applicant. Reporting the appearance grade in accordance with ASTM standards as based on yarn wound from one bobbin, per bobbin.	5.00
28.1	Furnishing yarn would on boards in connection with yarn appearance tests.	7.50
29.0	Strength of cotton fabric. Reporting the average warp and filling strength by the grab method as based on 5 breaks for both warp and filling of fabric furnished by the applicant, per sample.	18.00
29.1	Cotton fabric analysis. Reporting data on the number of warp and filling threads per inch and weight per yard of fabric as based on at least three (3) 6×6-inch specimens of fabric which were processed or furnished by the applicant, per sample.	31.00

Item No.	Kind of test	Fee per test
30.0	Chemical finishing test on finished drawing sliver. The Ahiba Texomat Dyer is used for scouring, bleaching and dyeing of a 3-gram sample. Color measurements are made on the unfinished, bleached and dyed cotton samples, using a Hunterlab Colorimeter, Model 25 M-3. The color values are reported in terms of reflectance (Rd), yellowness (+b) and blueness (−b).	14.00
	Minimum fee	42.00
31.0	Furnishing copies of test data worksheets. Includes individual observations and calculations which are not routinely furnished to the applicant, per sheet.	3.00
32.0	Furnishing identified cotton samples. Includes samples of ginned lint stock at any stage of processing or testing, waste of any type, yarn or fabric selected and identified in connection with fiber and/or spinning tests, per identified sample.	3.50
33.0	Furnishing additional copies of test reports. Include extra copies in addition to the 2 copies routinely furnished in connection with each test item, per additional sheet.	1.25
33.1	Furnishing a certified relisting of test results. Includes samples or sub-samples selected from any previous tests, per sheet.	15.00
34.0	Classification of ginned cotton lint is available in connection with other fiber tests, under the provisions of 7 CFR 28, §28.56, at the fees prescribed by 7 CFR 28, §28.116. Classification includes grade, staple, and micronaire reading based on a 6 oz. (170 g) sample.	

Dated: April 12, 1989.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 9148 Filed 4-14-89; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 33

[Docket No. FV-89-009]

Regulations Issued Under the Export Apple and Pear Act; Proposed Increase in Exemptions for Pears Being Shipped to Certain Foreign Destinations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would exempt from the current minimum U.S. No. 2 grade and container marking requirements those export shipments of pears in less than carload lots shipped to all Western Hemisphere countries touching or lying south of the Tropic of Cancer. This would include all countries in Central America, South America, and the Caribbean but not Bermuda or the Bahama Islands. The proposed rule would also redefine the term "less than carload lot" to mean a quantity of pears in packages not exceeding 50,000 pounds gross weight or 1,000 standard boxes or equivalent. These proposed changes reflect the industry's desire to expand the markets for pears and to increase their fresh utilization.

DATE: Comments must be received by May 17, 1989.

ADDRESS: Interested persons are invited to submit written comments concerning this rule to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456. Three copies of all written material shall be submitted, and they will be made available for public inspection in the office of the Docket Clerk during regular business hours. All comments should reference the date and page number of this issue of the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Virginia Olson, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2531–S, Washington, DC 20090–6456; telephone: (202) 475–3930.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under authority of the Export Apple and Pear Act (7 U.S.C. 581–590), as amended, applicable to shipments of apples and pears to any foreign destination. This rule would amend "Regulations Issued Under Authority of the Export Apple and Pear Act" (7 CFR Part 33).

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

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

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. There are approximately 100 pear handlers in Oregon, Washington and California subject to regulations issued under authority of the Export Apple and Pear Act, and approximately 1,800 pear producers in the Oregon, Washington and California area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of these handlers and producers may be classified as small entities.

Exemptions from the export regulations are specified in § 33.12—*Apples and pears not subject to regulation.* Currently, quantities of apples or pears not exceeding a total of 5,000 pounds gross weight or 100 boxes of apples or pears packed in standard boxes on a single conveyance may be shipped exempt from regulations to any country. Also exempt are shipments of pears to Venezuela and Mexico in less than carload lots are exceeding one such lot to any one consignee or receiver on a single conveyance. "Less than carload lot" is defined in § 33.8 as packages not exceeding 20,000 pounds gross weight or 400 standard boxes or equivalent. Apples and pears shipped in larger quantiites are subject to quality and container marking requirements and must be inspected by the Federal or Federal-State Inspection Service. Section 33.10 requires that apples grade at least U.S. No. 1 grade and pears grade U.S. No. 2 grade with specified exceptions. Also, packages of apples and pears for export must be marked as to the source of the fruit, varietal name, U.S. or state grade designation, and count of fruit in the package.

The Oregon-Washington-California Pear Bureau, which represents a substantial portion of the Northwest pear industry, unanimously recommended to change the definition of "less than carload lot", and to exempt from regulation shipments of pears in less that carload lots to any country in the Western Hemisphere which touches or lies south of the Tropic of Cancer, i.e., any country in Central America, South America, or the Caribbean, except Bermuda and the Bahama Islands.

The Northwest pear industry reports that during certain growing seasons pears may be affected by limb rub or frost damage. While these pears do not meet the minimum U.S. No. 2 grade requirements, they are otherwise acceptable to consumers. Pears from the Northwest which fail to meet U.S. No. 2 due to such factors as limb rub or frost damage are marketed domestically. The Northwest pear industry believes that increasing the minimum quantity

exemption and extending the exemption to additional export outlets could expand markets for these pears and increase the fresh utilization of the crop. Pears which are not shipped for fresh consumption to domestic or foreign markets are disposed of in processing outlets, such as juice. Processing outlets are normally not as remunerative as fresh use outlets.

Based on information furnished by the Winter Pear Control Committee, which administers the Federal Winter Pear Marketing Order, during the 1986–87 shipping season, 9,056,641 boxes of winter pears were produced in the Northwest. Of these, 1,183,626 boxes or 13 percent were exported. Of those exported, it is estimated that about eight percent (100,175 boxes) were shipped to South America, four percent (50,913 boxes) were shipped to Mexico, two percent (24,915 boxes) were shipped to the Caribbean, and one percent (9,790 boxes) were shipped to Central America. Exports to these countries represents approximately fifteen percent of the total exported from the U.S. or two percent of the total pears produced in the Northwest.

The industry has recommended redefining "less than carload lot" to enable exporters to ship substantially full loads of pears to foreign destinations. Under current limitations, many conveyances are travelling to destinations partially full. Under this proposal, "less than carload lot" for pears would be redefined to mean a quantity of pears in packages not exceeding 50,000 pounds gross weight or 1,000 standard boxes or equivalent. This is an increase from the current definition (not exceeding 20,000 pounds gross weight or 400 standard boxes or equivalent). Regulations applicable to exports of apples would not be changed.

The Oregon-Washington-California Pear Bureau and other industry groups conduct periodic meetings and consider recommendations for modification, suspension, or termination of the regulatory requirements under the Export Apple and Pear Act. These meetings are open to the public, and interested persons are given an opportunity to express their views at these meetings. The Department reviews recommendations and information submitted by these and other industry groups as well as other available information and determines whether such modification, suspension, or termination of the regulatory requirements would tend to effectuate the purposes of the Act.

Therefore, the Department's view is that the impact of this proposed action would be beneficial to producers and handlers because it would enable exporters to provide pears consistent with buyer preferences.

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

List of Subjects in 7 CFR Part 33

Export Apple and Pear Act, Apples and Pears.

For the reasons set forth in the preamble, it is proposed that 7 CFR Part 33 be amended as follows:

PART 33—REGULATIONS ISSUED UNDER AUTHORITY OF THE EXPORT APPLE AND PEAR ACT

1. The authority citation for 7 CFR Part 33 continues to read as follows:

Authority: Sec. 7, 48 Stat. 124; 7 U.S.C. 584 and 587.

2. Section 33.8 is revised to read as follows:

§ 33.8 Less than carload lot.

"Less than carload lot" means a quantity of apples is packages not exceeding 20,000 pounds gross weight or 400 standard boxes or equivalent, or a quantity of pears in packages not exceeding 50,000 pounds gross weight or 1,000 standard boxes or equivalent.

3. Section 33.12 is amended by revising paragraph (a) to read as follows:

§ 33.12 Apples and pears not subject to regulations.

* * * * *

(a) A quantity of apples or pears to any foreign country not exceeding a total of 5,000 pounds gross weight or 100 boxes of apples or pears packed in standard boxes on a single conveyance: *Provided,* That pears may be shipped to Western Hemisphere countries touching or lying south of the Tropic of Cancer in less than carload lots not exceeding one such lot to any one consignee or receiver on a single conveyance.

* * * * *

Dated: April 12, 1989.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–9131 Filed 4–14–89; 8:45 am]

BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

[Docket No. 89–042]

7 CFR Part 301

Varroa Mite Regulations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Withdrawal of proposed rule.

SUMMARY: In response to comments, we are withdrawing a proposal that would have established Varroa mite regulations. The proposed regulations would have guarantined states known or believed to be infested with Varroa mites, and would have restricted the interstate movement of regulated articles from the quarantined areas. The action we proposed was intended to retard, without absolutely preventing, the interstate spread of Varroa mites.

FOR FURTHER INFORMATION CONTACT: Doug Ladner, Senior Staff Officer, Plant Protection Management Systems, Policy and Program Development, APHIS, USDA, Room 812, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8716.

SUPPLEMENTARY INFORMATION: On April 11, 1988, we published in the **Federal Register** an interim rule that, effective April 6, 1988, added Varroa mite (Varroa) regulations (7 CFR 301.92 *et seq.*) to the "Domestic Quarantine Notices" in Title 7 of the Code of Federal Regulations (53 FR 11825–11830, Docket No. 87–140). Within a month we found it necessary to rescind those regulations, which we did in an interim rule effective May 6, 1988 and published in the **Federal Register** on May 10, 1988 (53 FR 16536–16538, Docket No. 88–082). As we explained at that time and in our affirmation of that interim rule on September 14, 1988 (53 FR 35425–35426, Docket No. 88–129), the Varroa regulations proved unworkable.

We considered the suggestions submitted by persons invited to comment on our several actions and, on November 8, 1988, we followed up with a notice in the **Federal Register** (53 FR 45134–43135). In that notice we announced our intent to establish a Varroa Mite Negotiated Rulemaking Advisory Committee. To quote from the document:

The comments we have received on the subject of Varroa mite regulations suggest that, while the Animal and Plant Health Inspection Service (APHIS) should again establish a federal regulatory program, we are unlikely to draft a rule that all interested parties would find acceptable. Accordingly, many commenters urged us to work with

representatives of these divergent interests, convinced that consensus on Varroa mite regulations is attainable. This encourages us to believe that negotiated rulemaking can, in this case, succeed.

Committee membership was to be determined by the ability of each participant to represent interests compatible, if not identical, with his/her own. We invited public comment on potential participants. The duly formed Varroa Mite Negotiated Rulemaking Advisory Committee (the Committee) included representatives of beekeeping organizations, migratory beekeepers, grower groups, related industry groups, state agencies, and the federal government.

The Committee met in two public sessions: November 30 through December 2, 1988, and January 5 through January 6, 1989 (meeting notices were published in the **Federal Register** November 10, 1988, 53 FR 45484, Docket No. 88–165, and December 19, 1988, 53 FR 50972, Docket No. 88–200, respectively). Accepting the consensus-based recommendations of the Committee, we published a proposed rule in the **Federal Register** of March 16, 1989 (54 FR 10992–11001, Docket No. 89–002). The proposal provided a 15-day period, ending March 31, 1989, in which the public could comment.

Sixty-seven comments reached us in time to be considered in our review. More than half objected to Varroa regulations. Other comments reflected ambivalence or were too ambiguous to count as supportive. Comments supporting the proposed regulations did so with reservations, skeptical about compliance and enforcement, or with provisos.

Having received no unqualified votes of confidence, we analyzed the provisos, caveats, concerns, and suggestions. Our decision against proceeding with the proposed regulations derives from that analysis.

Commenters expressed concern that overtreatment with Apistan will develop fluvalinate-resistant Varroa. Most researchers consider two treatments per year an acceptable limit. Our proposal would have allowed states to monitor and require retreatment at 45-day intervals if the Varroa infestation reached the proposed threshold.

Many commenters objected to the proposed treatment-triggering threshold. Whether they thought the threshold was too high or too low depended on whether the commenters' interest was pragmatic or regulatory.

Commenters also feared misapplication of chemicals under present conditions, when Apistan, the only Environmental Protection Agency-approved treatment, competes with other, unauthorized chemicals which, while illegal in this country, have been reported effective elsewhere. Commenters concerned about the possibility of residues in honey asked whether the United States Department of Agriculture would compensate producers with honey confiscated for impurity because of USDA-mandated treatment. Further, commenters representative of all interested parties expressed concern about the efficacy of the treatment. Commenters' doubts about the chemical were compounded by questions about compliance and enforcement.

Many states objected in their comments to the pest risk associated with the proposed sanctioned interstate movement of hives treated with Apistan, a treatment less than 100-percent effective.

We lack data with which to refute the objections to the pest risk, efficacy of the treatment, treatment-triggering threshold, and the possible effects of repeated treatments, which could delay movement, contaminate honey, and accelerate development of Apistan-resistant Varroa mites. We therefore find plausible the contention (expressed in many comments) that what we proposed could do more harm than good.

It seems unlikely, given the data now available, that any federal action could result in workable regulations that would win widespread support. Accordingly, we defer to the efforts of research, state government, and the beekeeping community itself. In publishing this document, we withdraw the Varroa regulations proposed on March 16, 1989.

Authority: 7 U.S.C. 147a, 150bb, 150dd, 150ee, 150ff; 161, 162, 164–167, and 2260; 7 CFR 2.17, 2.51, and 371.2(c).

Done in Washington, DC, this 13th day of April 1989.

Larry B. Slagle,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89–9263 Filed 4–14–89; 8:45 am]

BILLING CODE 3410-34-M

Agricultural Marketing Service

7 CFR Part 918

[Docket No. AO–162–A6; AMS–FV–88–039]

Peaches Grown in Georgia; Recommended Decision on Proposed Amendment of Marketing Agreement and Order No. 918

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule and opportunity to file exceptions.

SUMMARY: This recommended decision invites written exceptions on proposed further amendment of the Marketing Agreement and Marketing Order No. 918, covering Georgia peaches. The amendment proposals would: (1) Limit the terms of office of Industry Committee members to six consecutive one-year terms; (2) change committee voting procedures on size regulation recommendations by requiring at least one affirmative member vote from each of the three growing districts; (3) authorize container and pack regulations and container marking regulations; (4) add authority for positive lot identification procedures for inspected peaches; (5) authorize production research and marketing research and development projects; (6) require a referendum at least every six years to determine if growers are in favor of continuing the marketing order; (7) add provisions protecting the confidentiality of information provided by handlers; (8) add provisions specifying that the Secretary and the committee may verify the correctness of reports filed by handlers and compliance with recordkeeping requirements; and (9) make any necessary conforming changes. The amendment proposals are designed to improve the administration, operations, and functioning of the marketing order.

DATE: Written exceptions must be filed by May 17, 1989.

ADDRESS: Written exceptions should be filed with the Hearing Clerk, United States Department of Agriculture, Room 1079, South Building, Washington, DC 20250. Four copies of all written exceptions should be submitted, and they shall be made available for public inspection during regular business hours.

FOR FURTHER INFORMATION CONTACT: G.J. Kelhart, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456; telephone: (202) 475–3919, or John R. Toth, Officer-In-Charge, Southeast Marketing Field Office, Florida Citrus Building, 500 Third Street, NW., P.O. Box 2276, Winter Haven, Florida 33883–2276; telephone: (813) 299–4770. Copies of this decision may be obtained from either of the above named individuals.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding: Notice of hearing issued April 6, 1988, and

published in the Federal Register on April 11, 1988 (53 FR 11867).

This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291 and Departmental Regulation 1512–1.

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to the proposed further amendment of Marketing Agreement and Marketing Order No. 918, as amended (7 CFR Part 918), regulating the handling of peaches grown in Georgia, hereinafter referred to collectively as the order.

This notice of filing of the recommended decision and of opportunity to file exceptions thereto is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act, and the applicable rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders (7 CFR Part 900).

This proposed amendment of the order is based on the record of a public hearing held in Byron, Georgia, on April 28, 1988. All but three of the amendment proposals considered at the hearing were submitted by the Industry Committee (committee) established under the order. The United States Department of Agriculture (Department) proposed the addition of provisions protecting the confidentiality of information provided by handlers and specifying that the Secretary and the committee may verify the correctness of reports filed by handlers and compliance with recordkeeping requirements. In addition, the Department proposed that it be authorized to make any necessary conforming changes.

Small Business Considerations

In accordance with the provisions of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Administrator of the Agricultural Marketing Service has determined that this action would not have a significant economic impact on a substantial number of small entities. Small agricultural producers have been defined by the Small Business Administration (SBA) (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000. Small agricultural service firms, which include shippers under this marketing agreement and order, are defined as those firms with gross annual receipts of less than $3,500,000.

The purpose of the FRA 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. Interested persons were invited in the notice of hearing to present evidence at the hearing on the probable regulatory and informational impact of the proposed changes on small businesses. 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 the RFA and the Act are compatible with respect to small entities.

During the 1987 season, approximately 30 handlers of Georgia peaches were subject to regulation under the order. In addition, there are approximately 265 peach producers in Georgia. The majority of these handlers and producers may be classified as small entities.

The proposed amendment of § 918.26 to limit the terms of office of commitee members of six consecutive one-year terms would facilitate a regular rotation in committee membership and broaden industry participation in committee decision making. This would strengthen the program without adversely impacting small entities.

Revising § 918.30(a) to alter the committee voting procedures to require at least one affirmative vote from each of the three producer representation districts for any recommendation on size regulations would ensure that there was support for such recommendations in each district. The proposal should benefit small entities in all representation districts.

The proposal to add a new § 918.61a would authorize the committee, with the approval of the Secretary, to establish container, pack, and container-marking regulations in order to facilitate the efficient marketing of Georgia peaches and benefit producers and handlers. Such authority could reduce container and other marketing costs which would benefit small entities. Any savings would be directly proportional to the quantity of peaches handled. The impact of any particular proposed container, pack, and container-marking regulations would, of course, be considered at the time that such proposal would be made.

The proposed change amending § 918.64, would authorize the committee, with the approval of the Secretary, to establish positive lot identification procedures for peaches inspected under the order and would facilitate the committee's compliance effort by providing it with a reliable means of tying the inspection certificates it receives to the lots covered by the certificates. This could benefit both producers and handlers because the minimum quality and size requirements established under the order are important to the industry in fostering consumer satisfaction and increasing the demand for Georgia peaches. Hence, any advantages resulting from these procedures would be expected to outweigh any additional costs incurred by growers and handlers for positive lot identification. The additional costs would be proportional to the quantity of peaches handled. The impact of any particular proposal pertaining to positive lot identification would be considered at the time it is made.

The proposed addition of § 918.72 would authorize the committee, with the approval of the Secretary, to establish or provide for the establishment of production research and market research and development projects in order to facilitate research on many of its production and marketing problems. Such projects would benefit producers and handlers and would not adversely impact small entities. Any costs associated with this provision would be outweighed by the benefits of such projects.

The proposed amendment to § 918.81 would require a continuance referendum at least every six years which would provide producers a more frequent opportunity of periodically voting on whether the order should be continued. Such referenda would not adversely affect small entities.

The proposed amendment to § 918.76 containing provisions which would require confidential information provided by handlers to be protected from disclosure would improve operation of the order and would not adversely affect small entities.

The addition of § 918.77 authorizing the Secretary and the committee to verify the correctness of reports filed by handlers and to check handler compliance with recordkeeping requirements also would improve operation of the order and would not adversely affect small entities.

All of the proposed changes set forth in this document are designed to enhance the administration, operation, and functioning of the order. The proposed amendments to the order would not have a significant impact on the recordkeeping and reporting burdens of the Georgia peach industry. Moreover, the proposed changes would not appreciably change the reporting and recordkeeping requirements under the Paperwork Reduction Act of 1980 (44

U.S.C. Chapter 35), which have been previously approved by the Office of Management and Budget (OMB) under OMB No. 0581-0135. The action includes proposed amendments that would require information to be retained by handlers for at least two years. The evidence of record indicates that handlers generally maintain such information in the normal course of business for periods longer than two years. The information collection requirements contained in this proposal action will be submitted to OMB for approval. The requirements will not become effective prior to OMB approval.

Material Issues

The material issues of record addressed in this decision are:

(1) Whether to limit the terms of office of committee members to six consecutive years;

(2) Whether to change committee voting procedures on size regulation recommendations by requiring one affirmative member vote from each of the three growing districts;

(3) Whether to authorize container and pack regulations and container marking regulations;

(4) Whether to add authority for positive lot identification procedures for inspected peaches;

(5) Whether to authorize production research and marketing research and development projects;

(6) Whether to require a referendum at least every six years to determine if growers are in favor of continuing the order;

(7) Whether to add provisions to protect the confidentiality of information provided by handlers;

(8) Whether to add provisions allowing the Secretary and the committee to verify the correctness of reports filed by handlers and ascertain handler compliance with recordkeeping requirements; and

(9) Whether conforming changes should be made.

Findings and Conclusions

The findings and conclusions on the material issues, all of which are based on evidence adduced at the hearing and the record thereof, are:

(1) Section 918.26 should be amended by adding a proviso to limit the tenure of committee members to six consecutive one-year terms. Currently, members and alternates may serve an indefinite number of one-year terms.

The evidence of record indicates that the limitation on tenure would improve committee representation by bringing additional persons with different view points and experiences into active roles in the administration of the program. This would be beneficial to the committee's operations; moreover, such a limitation would encourage and foster to the maximum extent possible broad-based participation by all members of the industry in the administration of the order.

The provisions limiting each member's tenure to six consecutive one-year terms of office should apply starting with the term of office beginning March 1, 1989. The provisions would not apply to the number of consecutive terms alternate members may serve. Moreover, any person after having served six consecutive terms as member shall be immediately eligible to serve as an alternate member but shall not be eligible to serve again as a member until the term of office which begins one year later.

Consideration was given as to whether there would be enough qualified candidates in each district committee service in view of the planned rotation. The record evidence indicates that there are approximately 265 peach growers. Moreover, peach production is widely dispersed among the three districts. Therefore, there should be enough qualified candidates to serve on the committee in each district. Also, inasmuch as there is only one public member position on the committee, there should be enough qualified candidates from the entire State of Georgia to fill such position. However, to guard against the possibility of a position remaining vacant because of a lack of eligible nominees or eligible persons willing to serve, the Secretary should have the authority to exempt an individual from the tenure limitation. Such an exception would be made only in special and unusual circumstances.

Limiting the tenure of committee members as proposed would be in accordance with the Secretary's "Guidelines for Fruit, Vegetable, and Speciality Crop Marketing Orders."

(2) Section 918.15 provides for the establishment of a committee, consisting of nine members and alternate members to administer the order locally. This section also specifies that eight members and alternates shall be growers of peaches and that one member and alternate shall be individuals who are neither growers nor handlers of peaches. As specified in § 918.16, the members of the committee are apportioned among three grower districts referred to as the South Georgia District, the Central Georgia District, and the North Georgia District. Of the eight grower positions on the committee, the Central Georgia District is apportioned four positions and the other two districts are apportioned two positions each. The current committee procedural requirements in § 918.30 for the conduct of business require a quorum of five, and five concurring votes for the adoption of recommendations. These procedures should be changed by requiring at least one affirmative committee member vote from each district for any recommendations on size regulations to be valid.

Over the past several years, there have been differences of opinion among the growers from the South Georgia District and the growers from the Central and North Districts on the level of the minimum size (diameter) requirements needed to successfully market fresh Georgia peaches. The growers from the southern district tend to produce a higher percentage of small peaches in the 1⅝ to 1¾ inch in diameter range than the growers in the other two districts. In 1986, a total of 3,992.25 bushels of size 1⅝ inch or smaller peaches were shipped to regulated markets from all three districts. A total of 3,014.25 (or 75 percent) of those shipments originated from the South Georgia District. Hence, any increase in minimum size requirements could affect South Georgia growers more than the growers from the central and northern parts of the state.

Recommendations to increase and to decrease the size requirements have been made by the committee and implemented by the Department several times since the late 1970's. Currently, any peaches shipped to regulated markets cannot be smaller than 1¾ inches in diameter (lot and container tolerances are prescribed allowing for some smaller peaches to be shipped).

To protect themselves from possible size increases thought necessary by the growers from the Central and North Georgia Districts, the South Georgia growers in 1984 submitted a formal request to the Department to amend the order. The requested proposed that the South Georgia District be excluded from the production area, or in the alternative, that grade and size recommendations applicable to South Georgia growers be made by growers in that district under a separate order. In light of this request and numerous failed attempts to resolve this issue at the committee level, the Department decided to hold a referendum in the fall of 1986 to determine whether Georgia peach growers as a whole favored continuance of the order. Of the growers voting, 76 percent favored continuance

and they represented 89 percent of the peaches produced by those voting.

Subsequent to the announcement of the results of that referendum, the committee held further discussions and unanimously agreed to request the Department to amend the order to prescribe a permanent 1¾ inch size regulation. However, after further considering the inflexibility of its recommendation, the committee met again and on January 18, 1988, unanimously agreed to withdraw its proposal and in its place recommended that the order be amended to require that any future size regulation recommendation receive at least one concurring vote from each of the three districts and continue to require at least five concurring votes for any size recommendation to pass.

One of the factors considered in the evaluation of this proposal, insofar as it would enable any one district to defeat any motion by the other two districts to change size regulations, was whether it would adversely impact the long-term interest of growers. The Secretary's "Guidelines for Fruit, Vegetable and Specialty Crop Marketing Orders" recognize that quality requirements and size regulations can lead to long term market expansion. Those guidelines also emphasize the importance of establishing quality and size requirements which are flexible enough to maximize the marketing of all fruit suitable for consumption in fresh form. The testimony indicated that this proposal would provide such flexibility inasmuch as it would assure the growers of each district a decisive role in the committee's recommendations concerning size regulations. This recognizes that peaches grown in the three districts are of different varieties and have different characteristics, and that it is important to have a clear consensus of opinion within the industry to assure success in achieving program objectives.

Therefore, the committee's size regulation recommendations should be subjected to a more rigorous test of industry agreement. To accomplish this, the last sentence of § 918.30 should be revised to specify that for any recommendation of the Industry Committee to be valid, not less than five affirmative votes shall be necessary: *Provided,* That any decision on minimum size regulations also shall require at least one concurring vote from each district.

(3) A new § 918.61(a) should be added providing that whenever the Industry Committee deems it advisable to establish a container regulation for any variety or varieties of peaches, it shall recommend to the Secretary the size, capacity, weight, markings, or pack of the container, or containers which may be used in the handling of these peaches. It also should be provided that if the Secretary finds upon the basis of such recommendation or other information available that such container regulation would tend to effectuate the declared policy of the Act, the Secretary shall establish such regulations. Notice of the effective dates of any container regulation shall be sent by the Industry Committee to all handlers of record before the effective date of the regulation so they can plan accordingly.

The evidence of record indicates that there are 30 commercial packinghouses in Georgia that ship peaches in interstate commerce. These packinghouses pack their peaches in 25 different packages of one-half bushel and three-quarter bushel capacities manufactured by six corrugated box companies. Many of the containers differ in construction and dimensions, but not capacity. Testimony indicated that the practice of packing peaches in such an array of containers of differing types, shapes, strengths, and dimensions has significantly increased packaging costs. With container uniformity, proponents believe that the cost of containers could be reduced through economies of scale; carton manufacturers can produce large lots of a few types of containers less expensively than they can produce small quantities of many styles and types of containers.

The evidence of record also indicates that many of the containers used are not providing adequate protection to minimize physical injury during transit and marketing. Moreover, peaches from different packinghouses are often commingled and because the containers are not of comparable size they are difficult to load in a stable configuration. Movement during transit has resulted in physical injury to the peaches. Container standardization would allow commingled loads to be packed more tightly, thus reducing injury to the peaches, and in-transit losses. Through the use of container regulations the committee could foster the use of containers and packages offering the most protection during transit and which are more efficient in maintaining fruit quality.

The proponents indicated that any container limitations would be recommended only after thorough study and research and that handlers should be allowed to utilize their existing inventories to avoid wastage and higher packaging costs.

Some Georgia peach shippers pack volume fill, tray packs, and bulk bin containers utilizing a size system referred to in the industry as the "everything and up" pack. Under this system, containers of "one and three quarters and up" hold peaches varying in size from one and three-quarters to three inches in diameter, the maximum diameter usually reached by peaches grown in Georgia. This lack of uniformity in the size of the peaches from container to container has caused misunderstandings in the marketplace between the shippers and buyers. The proponents indicated that the confusion between the buyers and shippers has hindered sales of Georgia peaches.

The proponents contend that these misunderstandings can be avoided when a packing system, with moderate separation between the lower and higher sizes (diameters), is used. Some shippers in the industry have begun to pack sizes ranging between one and three-quarters to two inches, two inches to two and one-half inches, and two and one-half to three inches in diameter. The proponents indicated that these packs have fostered better communications and improved relationships with their buyers because there is less variability between the peaches in the containers and less chance of misunderstandings. Because of this, the proponents believe that the use of these packs on an industry-wide basis could lead to increased buyer satisfaction and increased sales. Therefore, authority allowing the committee, with the approval of the Secretary, to establish different pack and container specifications for different size and quality peaches shipped into regulated markets would be beneficial to the Georgia peach industry.

The evidence of record further indicates that authority to require accurate and uniform marking of the containers in which Georgia peaches are shipped would help interested persons more readily identify the shipments and the buyers in storing and retrieving the peaches at destination. These advantages can foster buyer satisfaction.

The record indicates that experience has shown that containers which are clearly marked and identified move through the marketing and distribution system more efficiently. This is especially important in handling a perishable commodity like peaches with a limited shelf life. Peaches can be kept in reasonably good condition after harvest for up to 14 days if handled properly and kept in cold storage. Ideally they should arrive at the

marketplace in four to five days. The use of incorrect marking as to variety, size and other factors have unduly delayed Georgia peach shipments.

Also, clear markings will enable the Industry Committee to more easily determine whether the peaches have been inspected and certified as required under the order and other identifying information such as the name of the shipper.

Any marking requirements could require the containers to be clearly marked and identified with the variety of the peaches; net weight, count, and/or volume; name and address of the packer or shipper; origin of the peaches; size and grade if applicable; and any other information on quality and pack of fruit as may be required under the order.

In connection with this recommended change, a minor conforming change in the first sentence of § 918.63 is necessary. The provisions of that sentence reference §§ 918.60 and 918.61. These references should be changed to §§ 918.60 through 918.61a in order to include the proposed section on container regulations.

(4) The evidence of record indicates that most peach packinghouses (i.e., handlers) in Georgia pack more than their own production. As a consequence, the trucks, trailers or other modes of transportation conveying the shipments to their final destination normally contain lots from several growers and/or packers at the same time which have been inspected and certified as meeting the minimum grade, quality, size and maturity requirements established under the order.

Section 918.64 requires handlers to cause each shipment of peaches to regulated markets to be inspected by the Federal Inspection Service or the Federal-State Inspection Service or any other designated inspection service. The handlers also are required to promptly provide the Industry Committee a copy of each inspection certificate issued. These procedures enable the committee to determine how many packages of a given brand or mark have been certified on a day-to-day basis. Currently, however, without positive lot identification procedures, the committee lacks the ability to determine precisely if any given lot has been inspected. This limitation is especially troublesome on those loads made up of lots from different growers and handlers.

Under the lot inspection and certification system currently employed under the order a licensed inspector selects samples and performs the inspection in accordance with established procedures and practices, and issues an official certification on the inspected product. Shipper brands and the name of the packers/shippers or growers usually are used on the certificate for the purpose of identifying the inspected lots. This type of inspection and certification has been used to determine that the lots or brands have been inspected as required under the order. However, because the identification marks appearing on the certificates are not necessarily unique to inspected cartons of fruit shipped, the committee's compliance checks are more difficult because a particular load or lot cannot be positively identified as having been inspected. Any handler who has a certificate covering a given number of cartons of a particular brand or mark could pack additional fruit in similarly marked cartons and could represent these cartons as the ones covered by the certificate.

Positive lot identification procedures provide an efficient and effective means of positively linking a load or lot in a truck or other mode of transportation to a specific inspection certificate. Under such procedures, the inspection service, in addition to sampling, inspecting and certifying the product, also becomes directly involved in identifying the product so that it can easily be tied to a specific certificate. The fruit must be packed and the required identification must be affixed to the cartons or the conveyance under the observation and supervision of the inspector.

It is the proponents' view that such procedures would make it more difficult for handlers to bypass the inspection and certification requirements established under the order and make the committee's compliance activities somewhat easier because loads or lots could be correlated to specific certificates. Georgia peaches destined to regulated markets tend to be made up of commingled lots from various growers and handlers. Providing the committee with the ability to tie specific certificates to particular lots of varying quality and size could help the committee more easily ascertain compliance of individual lots with the quality and size requirements implemented under the order and make it more difficult for handlers to circumvent order requirements. The quality and size requirements implemented under the order are important to the industry in fostering consumer satisfaction and increasing the demand for Georgia peaches.

Implementation of such procedures would increase handler inspection costs. However, the magnitude of the increase is diffiuclt to quantify because it depends on the type of positive lot procedures implemented. The committee should thoroughly assess program benefits and costs before recommending positive lot identification procedures.

Therefore, § 918.64 should be amended by adding paragraph (b) providing that the Industry Committee may establish, with the approval of the Secretary, positive lot identification requirements for lots of peaches inspected and certified pursuant to this section. Whenever implemented, such requirements should at least specify that upon inspection, all peaches shall be identified by tags, stamps, marks, or other means of identification recognized by the inspection service, that such identification shall be affixed to the container by the handler under the supervision of an inspector, and that such identification shall not be altered or removed except as directed by an inspector. The language in proposed § 918.64(b) has been changed from that which appeared in the notice of hearing. This change is for clarity and would reference the inspection services that appear in paragraph (a) of the proposed section. For the purposes of inspection and positive lot identification procedures, lot means the aggregate quantity of peaches of the same variety, in like containers with like identification offered for inspection as a shipping unit.

In the notice of hearing, the provisions proposed in § 918.64 would have authorized the Industry Committee to prescribe the means of identification, allowed the identification to be affixed to the containers under the supervision of the Industry Committee, and allowed the identification to be altered or removed under the direction of the Industry Committee. However, in implementing positive lot identification procedures, these activities are best performed by the Federal or Federal-State Inspection Service. Accordingly, the recommended provisions of paragraph (b) would require all of these activities to be performed by the Federal or Federal-State Inspection Service.

No evidence was presented at the hearing concerning other safeguards which might be needed to properly and positively identify peach shipments and prevent shipments of uninspected peaches. Hence, when the Industry Committee has considered the details of handling, storing, and shipping peaches under positive lot identification requirements, these procedures should be established through the informal rulemaking process. The proponents did indicate that such procedures and safeguards should be designed to assure that the lots of inspected peaches shipped and delivered were the same peaches described on the inspection

certificate covering the lot and that the Industry Committee would work closely with the Federal or Federal-State Inspection Service in developing the procedures necessary to accomplish these goals.

(5) Section 918.72 should be added to permit the Industry Committee, with the approval of the Secretary, to establish, or provide for the establishment of projects involving production research, and marketing research and development designed to assist, improve or promote the marketing, distribution and consumption of peaches and the efficient production of peaches. The expenses of such projects would be paid from funds collected pursuant to § 918.41, or from any other sources approved by the Secretary.

Under the authority contained in proposed § 918.72 the Industry Committee could undertake or contract for such projects or support ongoing projects to find solutions to its production and marketing problems which will be beneficial to the peach industry in Georgia. It is not expected that the funds likely to become available from assessements will be sufficient to conduct large research and development projects directly, because the financial resources of the Georgia peach industry are limited. However, the authorization would permit the committee to cooperate more effectively in projects conducted by Federal or State agencies, educational institutions, and private research organizations through contracts or other appropriate means. The authorization would also allow the Industry Committee to use other sources of income approved by the Secretary to fund needed production research and market research and development projects.

Hearing testimony was presented noting that public funds are becoming increasingly difficult to obtain. The delay in research on split pits and pit fragments was given as an example of the difficulties experienced in obtaining research funds. The proponents emphasized that this authority would allow the committee to provide researchers with needed funds to establish or continue industry-related research projects.

Under the proposed authority the Industry Committee could range for the conduct of prodûction research in the areas of insect and disease control, tree and crop research, and fumigant, insecticide, fertilizer, and herbicide application. The proponents indicated that research in these areas could help the industry improve its yield per acre, improve the quality of the peaches produced, and reduce production costs. Research in the areas of market research and market development could help the industry market its peaches and reduce its marketing costs. More specifically, research could be used by the industry to study the effects of its minimum quality regulations in fostering increased peach sales. Research could also be conducted on containers to determine which containers perform the best in the marketing chain. Market development research could involve efforts to identify new markets for peaches. Researchers could survey peach buyers at chain stores and terminal markets and consumers of peaches in an effort to better understand the quality attributes that consumers desire in peaches. It is not intended that Industry Committee efforts under this provision would be limited to the activities mentioned above, but that it have broad discretion, with the approval of the Secretary, in determining the types of research and development efforts which it believes will be beneficial to the Georgia peach industry as a whole.

Inasmuch as there is a need for greater effort and participation of the indusry in the solution of its common problems, and because the authority to conduct such research activities can be expected to contribute to the more efficient production and marketing of Georgia peaches, it is concluded that this provision should be addd to the order.

(6) Section 918.81 should be amended by redesignating paragraph (d) as paragraph (e) and adding a new paragraph (d) to require that referenda on continuance of the order be held a minimum of every six years after the effective date of the amendment. Currently, the order does not provide for the conduct of periodic continuance referenda, but does provide that the Secretary shall conduct a continuance referendum when recommended by the committee, or upon the request of six or more growers who produced 10 percent or more of the inspected peaches shipped during the then current fiscal period as long as such request is received prior to December 1.

The Secretary of Agriculture has determined that continuance referenda are an effective means for ascertaining whether producers favor continuation of marketing order programs. Currently, the order and the Act provide that the Secretary shall terminate the marketing order program whenever, through the conduct of a referendum, it is indicated that a majority of all producers favor termination and such majority produced more than 50 percent of the commodity for market during a representative period. Since less than 50 percent of all producers usually participate in a referendum, it is difficult to determine producer support for an order. Thus, to provide a basis for determining whether producers favor continuance of the order, § 918.81 should be amended to provide for continuance referenda. The results of continuance referenda should be based upon the same percentage of support required in section 8c(8) of the Act with respect to producer approval of the issuance of a marketing order. This requirement is considered adequate to measure producer support to continue the marketing order. The Secretary would consider termination of the order if less than two-thirds of the producers voting in the referendum and producers of less then two-thirds of the volume of fruit represented in the referendum favor continuance. In evaluating the merits of continuance versus termination, the Secretary would not only consider the results of the referendum but also would consider all other relevant information concerning the operation of the order and the relative benefits and disadvantages to producers, handlers,and consumers in order to determine whether continued operation of the order would tend to effectuate the declared policy of the Act. In this regard, in the event of an adverse vote by producers in a continuance referendum, the Secretary may solicit input from the public through meetings, press releases, or other means.

In any event, section 8c(16)(B) of the Act requires the Secretary to terminate the order whenever the Secretary finds that the majority of all producers favor termination, and that such majority produced more than 50 percent of the commodity for market. To be effective, termination of the order, resulting from any referendum, should be announced on or before the last day of the then current fiscal period. The fiscal period for this program ends the last day of February. This date precedes the beginning of the committee's operation for a new fiscal period and is considered to be an appropriate time to terminate the operations of the order.

The Secretary's "Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders" provide for periodic referenda to allow producers the opportunity to indicate their support for or rejection of a marketing order. The Department believes that periodic referenda ensure that marketing order programs continue to be accountable to their producers, obligate producers to evaluate their programs periodically, and involve them more closely in their

operation. The record evidence supports these goals.

Therefore, the order should be amended providing that the Secretary shall conduct a referendum among growers a minimum of every six years after the effective date of this amended subpart to ascertain whether continuance of this part is favored by growers. However, when a continuance referendum is conducted pursuant to paragraph (c) of this section, this referendum shall be conducted six years after the referendum conducted pursuant to paragraph (c). The Secretary may terminate the provisions of this part at the end of any fiscal period in which the Secretary has found that continuance of this part is not favored by producers who, during a representative period, determined by the Secretary, have been engaged in the production for market of the fruit in the production area, except that termination of this part shall be effective only if announced on or before the last day of the then current fiscal period.

(7) A new § 918.76 as proposed by the Department should be added to specify that confidential information provided by them would be protected from disclosure. To effect this change, § 918.76 should specify that all data or other information constituting a trade secret or disclosing a trade position or business condition shall be received by, and kept in the custody of, one or more designated employees of the committee, and information which would reveal the circumstances of a single handler shall be disclosed to no person other than the Secretary, except as required by law.

Although the provisions would appear in the order for the first time, the requirements are not new. The Act under which the order is issued already requires that such information be kept confidential and the statutory requirements have been implemented through the supervision of the Industry Committee (and similar committees for other marketing order commodities) by the Department.

Section 918.76 would specify the procedures which will be followed to keep certain information submitted to the committee by handlers confidential. These provisions would specify that designated employees of the committee would have the responsibility for safeguarding the confidentiality of all data and information submitted by handlers to the committee, which constitutes a trade secret or discloses a trade position or business condition of an individual handler. All such information submitted would be received by and kept in the custody of one or more designated employees of the committee.

Information submitted by handlers would remain confidential and would be disclosed to no person other than the Secretary or persons authorized by the Secretary to review such information unless disclosure is otherwise required by law. This is necessary to prevent the disclosure of information that may affect the financial position or business operations of individual handlers. Under certain circumstances, the release of composite information compiled from data and information submitted by handlers has been helpful to the Industry Committee and the industry in planning operations under the marketing order and this will be continued. However, as in the past, such composite information would not disclose the identities of the individual handlers or their separate business operations.

(8) A new § 918.77 should be added, as proposed by the Fruit and Vegetable Division, AMS, to expressly state in the order language the right of the Secretary, and confer such right on the committee, to verify the correctness of reports filed by handlers and to check handler compliance with recordkeeping requirements.

This proposal would merely specify in the order the investigative authority already provided by the Act. Section 918.77 would specify that the Secretary and the committee, through its duly authorized employees, would have access to any premises where handlers' peaches are held and, at any time during normal business hours, would be permitted to examine any such peaches and any and all records with respect to matters within the purview of this marketing order. Handlers would be responsible for furnishing labor as may be necessary to facilitate such examinations. The Secretary and duly authorized committee employees would have the authority to examine and audit records of all handlers to determine compliance with provisions of this marketing order. The committee would report the results of such examinations and audits to the Secretary.

So that the committee would be able to perform investigations effectively and to verify compliance under this marketing order, each handler would be required to maintain complete record which accurately show such handler's acquisition and disposition of peaches each season, including the quantity of peaches held, sold, and shipped. Such information is generally maintained by handlers in the normal course of business and would not impose additional costs and reporting burdens on the handlers.

Further, should it be found necessary, the committee, with the approval of the Secretary, would have the authority to issue regulations which would establish the type of records which must be maintained. Handlers would be required to keep the records for at least two years following the end of each fiscal period. A two-year period should afford the committee's employees adequate time for examining and reviewing such records in the event of alleged program violations by handlers. This requirement should not impose an undue burden on handlers, since such records are likely retained for a similar or longer period under normal business practices.

(9) The Department proposed in the notice of hearing that it be authorized to make any necessary changes in the order language to make the entire order conform with any amendments resulting from this proceeding. This proposal was supported at the hearing without opposition. Such conforming changes as necessary and stated herein have been incorporated in this recommended decision.

Rulings on Briefs of Interested Persons

At the conclusion of the hearing, the Administrative Law Judge fixed June 17, 1988, as the final date for interested persons to file proposed findings and conclusions and written arguments or briefs, based on the evidence received at the hearing. None were filed.

General Findings

Upon the basis of the record, it is found that: (1) The findings hereinafter set forth are supplementary to, and in addition to, the previous findings and determinations which were made in connection with the issuance of the marketing agreement and order and each previously issued amendment thereto. Except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein, all of said prior findings and determinations are hereby ratified and affirmed;

(2) The marketing agreement and order, as amended, and as hereby proposed to be further amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act:

(3) The marketing agreement and order, as amended, and as hereby proposed to be further amended, regulate the handling of fresh peaches grown in the production area in the same manner as, and are applicable only to, persons in the respective classes

of commercial and industrial activity specified in the marketing agreement and order upon which hearings have been held;

(4) The marketing agreement and order, as amended, and as hereby proposed to be further amended, are limited in their application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

(5) The marketing agreement and order, as amended and as hereby proposed to be further amended, prescribe, so far as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the difference in the production and marketing of fresh peaches grown in the production area; and

(6) All handling of fresh peaches grown in the production area as defined in the marketing agreement and order, as amended, and as hereby proposed to be further amended, is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

List of Subjects in 7 CFR Part 918

Marketing agreements and orders, Georgia, Peaches.

Recommended Further Amendment of the Marketing Agreement and Order

The following amendment of the marketing agreement and order, both as amended, is recommended as the detailed means by which the foregoing conclusions may be carried out:

PART 918—PEACHES GROWN IN GEORGIA

1. The authority citation for 7 CFR Part 918 continues to read as follows:

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

2. Section 918.26 is amended by adding a proviso to read as follows:

§ 918.26 Term of office.

* * * *Provided,* That no member shall serve more than six full consecutive terms starting with the term beginning March 1, 1989.

3. The last sentence of § 918.30(a) is revised to read as follows:

§ 918.30 Procedure.

(a) * * * For any recommendation of the Industry Committee to be valid, not less than five (5) affirmative votes shall be necessary: *Provided,* That any recommendation on minimum size regulations also shall require at least one (1) concurring vote from each district.

* * * * *

4. A new § 918.61a is added to read as follows:

§ 918.61a Container regulation.

Whenever the Industry Committee deems it advisable to establish a container regulation for any variety or varieties of peaches, it shall recommend to the Secretary the size, capacity, weight, marking, or pack of the container, or containers, which may be used in the handling of these peaches. If the Secretary finds upon the basis of such recommendation or other information available that such container regulation would tend to effectuate the declared policy of the Act the Secretary shall establish such regulation. Notice thereof shall be sent by the Industry Committee to all handlers of record.

§ 918.63 [Amended]

5. Section 918.63 is amended by changing the words "pursuant to §§ 918.60 and 918.61," in the first sentence to "pursuant to §§ 918.60 through 918.61a."

6. Section 918.64 is amended by designating the current provisions as paragraph (a) and adding a new paragraph (b) to read as follows:

§ 918.64 Inspection.

(a) * * *

(b) The Industry Committee may establish with the approval of the Secretary positive lot identification requirements for lots of peaches inspected and certified pursuant to this section. Whenever implemented, such requirements shall at least specify that upon inspection, all peaches shall be identified by tags, stamps, marks, or other means of identification recognized by the Federal Inspection Service or the Federal-State Inspection Service or any other inspection service designated by the Secretary; that such identification shall be affixed to the contained by the handler under the supervision of the Federal Inspection Service or the Federal-State Inspection Service or any other inspection service designated by the Secretary; and that such identification shall not be altered or removed except as directed by the Federal Inspection Service or the Federal-State Inspection Service or any other inspection service designated by the Secretary. For the purposes of this section, lot means the aggregate quantity of peaches of the same variety, in like containers with like identification offered for inspection as a shipping unit.

7. Insert the undesignated center heading, "Research and Development," after § 918.71 and add § 918.72 to read as follows:

Research and Development

§ 918.72 Production and research and market research and development.

The Industry Committee, with the approval of the Secretary, may establish or provide for the establishment of projects involving production research and marketing research and development designed to assist, improve or promote the marketing, distribution and consumption of peaches and the efficient production thereof. The expenses of such projects shall be paid from funds collected pursuant to § 918.41, or from any other sources approved by the Secretary.

8. Section 918.81 is amended by redesignating paragraph (d) as paragraph (e) and adding a new paragraph (d) to read as follows:

§ 918.81 Termination.

* * * * *

(d) The Secretary shall conduct a referendum among growers every six years after the effective date of this amended subpart to ascertain whether continuance of this part is favored by growers. However, when a continuance referendum is conducted pursuant to paragraph (c) of this section, this referendum shall be conducted six years after the referendum conducted pursuant to paragraph (c). The Secretary may terminate the provisions of this part at the end of any fiscal period in which the Secretary has found that continuance of this part is not favored by producers who, during a representative period determined by the Secretary, have been engaged in the production for market of the fruit in the production area, except that termination of this part shall be effective only if announced on or before the last day of the then current fiscal period.

* * * * *

9. A new § 918.76 is added to read as follows:

§ 918.76 Confidential information.

All data or other information constituting a trade secret or disclosing a trade position or business condition shall be received by, and kept in the custody of, one or more designated employees of the Industry Committee, and information which would reveal the circumstances of a single handler shall be disclosed to no person other than the Secretary.

10. A new § 918.77 is added to read as follows:

§ 918.77 Verification of reports and records.

For the purpose of checking compliance with recordkeeping requirements and verifying reports filed by handlers, the Secretary and the Industry Committee through its duly authorized employees shall have access to any premises where peaches are held and, at any time during reasonable business hours, shall be permitted to examine any peaches held and any and all records with respect to matters within the purview of this part. Handlers shall furnish labor necessary to facilitate such examinations at no expense to the Industry Committee. All handlers shall maintain complete records which accurately show the quantity of peaches held, sold, and shipped. The Industry Committee, with the approval of the Secretary, may establish the type of records to be maintained. Such records shall be retained by handlers for not less than two years subsequent to the termination of each fiscal period.

Dated: April 12, 1989.

J. Patrick Boyle,

Administrator, Agricultural Marketing Service.

[FR Doc. 89-9132 Filed 4-14-89; 8:45 am]

BILLING CODE 3410-02-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34-26715; File No. S7-3-89]

Suitability Requirements for Transactions in Certain Securities

AGENCY: Securities and Exchange Commission.

ACTION: Extension of comment period.

SUMMARY: The Securities and Exchange Commission is extending from April 17, 1989, to May 19, 1989, the date by which comments must be received on Securities Exchange Act Release No. 26529 (February 8, 1989), 54 FR 6693, concerning suitability requirements for transactions in certain securities.

DATE: Comments on Securities Exchange Act Release No. 26529 should be received on or before May 19, 1989.

ADDRESS: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Mail Stop 6-9, Washington, DC 20549. Comment letters should refer to File No. S7-3-89. All comment letters received will be made available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC. 20549.

FOR FURTHER INFORMATION CONTACT: Robert L.D. Colby, Chief Counsel, (202) 272-2844; or Dan Gray, Attorney, (202) 272-2848, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street NW., Mail Stop 5-1, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: In Securities Exchange Act Release No. 26529 (February 8, 1989) 54 FR 6693, the Commission requested written comments on proposed Rule 15c2-6. The proposed rule would require written customer agreement to, and a documented suitability determination for, certain recommended transactions in equity securities that are not registered on a national securities exchange or authorized for quotation in the NASDAQ system, and whose issuers do not meet certain minimum financial standards. Several potential commentators have indicated their need for additional time to prepare their comments. In order to receive the benefit of comments from the greatest number of interested persons, the Commission is extending the comment period on Securities Exchange Act Release No. 26529 from April 17, 1989, to May 19, 1989.

By the Commission.

Dated: April 12, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-9126 Filed 4-14-89; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting and Supervising Federal Prisoners; Manufacture, Sale, and Fradulent Use of Credit Cards

AGENCY: Parole Commission, Justice.

ACTION: Proposed rule.

SUMMARY: The Parole Commission is proposing an amendment to its paroling guidelines at 28 CFR 2.20, Chapter Three, Subchapter D, section 331(f), to provide instruction as to how offenses involving the fraudulent manufacture, sale and use of credit cards should be rated. Currently, there is not a means to consistently assess these types of offenses which often involve some degree of sophistication, planning, and orchestration. The revised guidelines provide for three separate classes of credit card related offenses. This proposed rule will provide a fair assessment of the relative seriousness of the types of offenses described.

DATE: Public comment must be received by May 17, 1989.

ADDRESS: Comments should be addressed to: Richard K. Preston, General Counsel's Office, United States Parole Commission, 5550 Friendship Boulevard, Chevy Chase, Maryland 20815.

FOR FURTHER INFORMATION CONTACT: Richard K. Preston, Attorney, Telephone (301) 492-5959.

SUPPLEMENTARY INFORMATION: Over the past few years, the Parole Commission has noted a significant increase in the fraudulent use and fraudulent manufacture of credit cards. In the past, rating the seriousness of an offense involving the use of a stolen credit card has been fairly straightforward. However, the recent trend of manufacturing fradulent credit cards and the wholesale distribution or possession of multiple stolen credit cards has not been adequately addressed in the Commission's guidelines. Therefore, the Commission is proposing the following changes in order to more consistently assess the type of offenses involving credit cards.

This proposed rule change will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Probation and Parole, Prisoners.

The Proposed Amendment

Accordingly, the Parole Commission proposes to amend Part 2 of 28 CFR as follows:

PART 2—[AMENDED]

1. The authority citation for 28 C.F.R. Part 2 continues to read:

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

2. 28 CFR 2.20, Chapter Three, Subchapter D, Paragraph 331(f) is amended to add a new subpart (4) to read as follows:

§ 2.20 [Amended]

(f) *Exceptions:*

(1) * * *

(2) * * *
(3) * * *
(4) Grade manufacture, sale, and fraudulent use of credit cards as follows:
(i) Grade the manufacture, distribution or possession of counterfeit or altered credit cards as not less than Category Four.
(ii) Grade the distribution or possession of multiple stolen credit cards as not less than Category Three.
(iii) Grade the distribution or possession of a single stolen credit card as not less than Category Two.
* * * * *

Date: April 5, 1989.

Benjamin F. Baer,

Chairman, U.S. Parole Commission.

[FR Doc. 89-9158 Filed 4-14-89; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 943

Texas Permanent Regulatory Program; Reopening and Extension of Public Comment Period on Proposed Amendment

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

ACTION: Proposed rule; reopening and extension of comment period.

SUMMARY: OSMRE is announcing receipt of revisions pertaining to a previously proposed amendment to the Texas permanent regulatory program (hereinafter, the "Texas program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The revisions pertain to self-bonding regulations. The amendment is intended to revise the State program to be consistent with the corresponding Federal standards.

This notice sets forth the times and locations that the Texas program and the proposed amendment to that program are available for public inspection, and the reopened comment period during which interested persons may submit written comments on the proposed amendment.

DATE: Written comments must be received by 4:00 p.m., c.d.t. May 2, 1989.

ADDRESSES: Written comments should be mailed or hand delivered to Mr. James H. Moncrief at the address listed below.

Copies of the Texas program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSMRE's Tulsa Field Office.

Mr. James H. Moncrief, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, Suite 550, Tulsa, OK 74135; Telephone: (918) 581-6430

Office of Surface Mining Reclamation and Enforcement, Administrative Record Office, Room 5131, 1100 L Street NW., Washington, DC 20240; Telephone: (202) 343-5492

Railroad Commission of Texas, Surface Mining and Reclamation Division, Capitol Station, P.O. Drawer 12967, Austin, TX 78711; Telephone: (512) 463-6900.

FOR FURTHER INFORMATION CONTACT: Mr. James H. Moncrief, Director, Tulsa Field Office, at the address or telephone number listed in "**ADDRESSES.**"

SUPPLEMENTARY INFORMATION:

I. Background on the Texas Program

On February 16, 1980, the Secretary of the Interior conditionally approved the Texas program. General background information on the Texas program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Texas program, can be found in the February 27, 1980, **Federal Register** [45 FR 12998]. Subsequent actions concerning Texas' program and program amendments can be found at 30 CFR 943.10, 943.15, and 943.16.

II. Proposed Amendment

Texas submitted the proposed amendment in response to a February 18, 1987, letter (administrative record No. TX-390) that OSMRE sent in accordance with 30 CFR 732.17(c). The regulations that Texas proposes to amend are at § 806.309(j), Terms and Conditions of the Bond; Self-bonding.

OSMRE published a notice in the September 27, 1988, **Federal Register** (53 FR 37599), announcing receipt of the amendment and inviting public comment on the adequacy of the proposed amendment. The public comment period ended October 27, 1988.

During its review of the amendment, OSMRE identified concerns relating to the proposed regulations at 806.309(j), Terms and Conditions of the Bond; Self-bonding—Sections 1(D) and (H), 2, 3, 4, 5(A) and (B), 6(A) through (E), 7, 8, and 9. OSMRE notified Texas of the concerns by letter dated November 15, 1988 (administrative record No. TX-427). Texas responded in a letter dated March 21, 1989, by submitting a revised amendment package (administrative record No. TX-445).

III. Public Comment Procedures

OSMRE is reopening the comment period on the proposed Texas program amendment to provide the public an opportunity to reconsider the adequacy of the amendment in light of the additional materials submitted. In accordance with the provisions of 30 CFR 732.17(h), OSMRE is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Texas program.

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Tulsa Field Office will not be considered in the final rulemaking or included in the administrative record.

List of Subjects in 30 CFR Part 943

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Raymond L. Lowrie,

Assistant Director, Western Field Operations.

Date: April 7, 1989.

[FR Doc. 89-9097 Filed 4-14-89; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3555-7]

Approval and Promulgation of Implementation Plans; Public Hearing on Federal Assistance Limitations and Construction Moratorium; State of Indiana

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Notice of postponement of public hearing.

SUMMARY: USEPA is giving notice that the public hearing set in the notice of proposed rulemaking published March 13, 1989 (54 FR 10381), has been postponed from April 13, 1989, to May 25, 1989. This notice proposed the imposition of Federal highway, air quality, and sewage treatment funding restrictions, and a stationary source

construction moratorium, for Lake and Porter Counties, Indiana, because the State did not have an adequate program to enforce the requirements of its vehicle inspection and maintenance (I/M) program. The State Legislature has subsequently passed authorization for a registration denial enforcement mechanism; however, adequate funding to operate the program must still be provided. The Legislature is expected to address program funding by the end of the current legislative session. If adequate funding to operate the I/M program is provided, USEPA will cancel the May 25, 1989, public hearing and will not proceed with the sanction process. The time and place of the May 25, 1989, public hearing will be announced at a later date.

DATES: The public hearing has been changed from April 13, 1989, to May 25, 1989.

FOR FURTHER INFORMATION CONTACT: Cheryl Newton, Air and Radiation Branch (5AR–26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886–6081.

Date: April 6, 1989.

Frank M. Covington,

Acting Regional Administrator.

[FR Doc. 89–9124 Filed 4–14–89; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Parts 141 and 142

[FRL–3556–3]

National Primary Drinking Water Regulations; Filtration and Disinfection; Turbidity, Giardia Lamblia, Viruses, Legionella, and Heterotrophic Bacteria; Total Coliforms.

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability of draft Guidance Manual for comment.

SUMMARY: On November 3, 1987, EPA proposed for comment surface water treatment requirements and a national primary drinking water regulation for total coliforms, plus maximum contaminant level goals for certain microbiological contaminants, under the Safe Drinking Water Act (52 FR 42178 and 52 FR 42224). On May 6, 1988, EPA published a notice of availability (52 FR 16348), which solicited specific data, offered additional regulatory options for comment, and clarified and corrected statements made in the November 3, 1987, proposal.

EPA also prepared a draft "Guidance Manual for Compliance with the Surface Water Treatment Requirements (SWTR) for Public Water Supplies" ("Guidance Manual") dated October 8, 1987. The manual was intended to provide guidance for implementing the proposed surface water treatment requirements. As part of the November 1987, notice of proposed rulemaking, EPA solicited comment on the Guidance Manual. As a result of those comments and planned revisions to the SWTR, EPA has prepared a revised draft Guidance Manual dated March 31, 1989. To receive a copy of the March 31, 1989, draft Guidance Manual, contact the Safe Drinking Water Hotline, telephone (800) 426–4791 or (202) 382–5533, in Washington, DC.

EPA solicits written comments on the guidelines and recommendations in the March 31, 1989, draft Guidance Manual.

DATES: To be considered in the development of the final Guidance Manual, written comments must be submitted on or before June 15, 1989. EPA will have a final Guidance Manual available this summer.

ADDRESSES: Send written comments on the March 31, 1989, Draft Guidance Manual to Surface Water Treatment Rule—Guidance Manual; Comment Clerk; Criteria and Standards Division; Office of Drinking water (WH–550D); Environmental Protection Agency; 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: The Safe Drinking Water Hotline, telephone (800) 426–4791 or (202) 382–5533 in the Washington, DC metropolitan area; or Stig Regli, Environmental Engineer, Science and Technology Branch, Criteria and Standards Division, Office of Drinking Water (WH–550D), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; telephone (202) 382–7379.

Date: April 11, 1989.

William A. Whittington,

Acting Assistant Administrator for Water.

[FR Doc. 89–9120 Filed 4–14–89; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 82

[FRL–3554–3]

Protection of Stratospheric Ozone

AGENCY: Environmental Protection Agency.

ACTION: Advance Notice of Proposed Rulemaking.

SUMMARY: EPA is issuing this advance notice of proposed rulemaking (ANPRM) to support its efforts to protect stratospheric ozone. Specifically, the Agency is considering the possibility of adding methyl chloroform and carbon tetrachloride to the list of ozone-depleting chemicals already regulated by the Montreal Protocol on Substances That Deplete the Ozone Layer and the EPA rule implementing the Protocol (53 FR 30566, August 12, 1988). Today's notice explains why regulation of methyl chloroform and carbon tetrachloride may be necessary and requests public comments on EPA's analysis and the possible impact of regulating these chemical substances.

DATE: Written comments on the ANPRM Rule must be submitted by May 15, 1989, to the location listed below.

ADDRESSES: Written comments should be sent to Docket (A–89–09) Air Docket, First Floor-Waterside Mall, Room 1500, LE131, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The docket may be inspected between 8 a.m. and 3:30 p.m. on weekdays. As provided in 40 CFR Part 2, a reasonable fee may be charged for photocopying. To expedite review, it is also requested that a duplicate copy of written comments be sent to Karla Perri at the address listed below.

FOR FURTHER INFORMATION CONTACT: Karla Perri, Division of Global Change, OIAIP, Office of Air and Radiation, (ANR–445), U.S. EPA, 401 M Street SW., Washington, DC 20460. Telephone (202) 475–7496.

SUPPLEMENTARY INFORMATION:

I. Background

The threat of depletion of the ozone layer from chlorine released from chlorofluorocarbons (CFCs) was first raised well over a decade ago by the scientific community. (Molina and Rowland 1974). The initial theory suggested that because CFCs are relatively inert, emissions of these chemicals would not break down in the lower atmosphere, but would instead slowly migrate to the stratosphere where they would then break apart releasing chlorine. Once freed in the stratosphere, the chlorine would catalytically destroy ozone. From a health and environmental perspective, depletion of the ozone layer would allow more harmful ultraviolet radiation to penetrate the atmosphere and strike the earth's surface. This would increase the incidence of skin cancers and cataracts, suppress the human immune system, damage crops, forests, and aquatic systems, accelerate weathering of certain plastics, and increase the formation of ground level (tropospheric) ozone or smog.

In the fourteen years of research since the original theory was proposed considerable scientific evidence has supported the general concern that increased emissions of CFCs (and halons) would lead to ozone depletion. (See, for example, "Present State of Knowledge of the Upper Atmosphere 1988: An Assessment Report," National Aeronautics and Space Administration (NASA), #1208, August 1988).

In 1981, in response to the growing scientific consensus, the United Nations Environment Program (UNEP) began negotiations to develop a multilateral response to reducing the threat of ozone depletion. These negotiations resulted in the Vienna Convention for the Protection of the Ozone Layer in March 1985. The convention provided a framework for international cooperation in research, monitoring, and information exchange. Further negotiations resulted in the Montreal Protocol on Substances that Deplete the Ozone Layer. The Montreal Protocol was signed in September 1987 and requires the Parties to control or reduce their use of specified ozone-depleting chemicals. EPA promulgated regulations implementing the Protocol on August 12, 1988. (See 52 FR 47486, December 14, 1987, and 53 FR 30566, August 12, 1988). The conditions for the Protocol's entry-into-force were statisfied in December 1988, and the Protocol and the EPA's rule went into effect January 1, 1989.

On the same day that the Agency issued its final rule implementing the Montreal Protocol, it also published an Advance Notice of Proposed Rulemaking (ANPRM) on possible further efforts to protect stratospheric ozone (53 FR 30604, August 12, 1988). Currently, the Montreal Protocol and the EP regulation require a 50 percent phase-in reduction in the production and consumption of specified fully-halogenated CFCs by 1998, and a freeze at 1986 levels of specified halons beginning in 1992. In the August ANPRM however, EPA described new scientific information which suggests that additional reductions in CFCs, halons and possibly other ozone depleting chemicals may be necessary.

This new scientific information along with other information is currently being reviewed under Article 6 of the Protocol. Article 6 states that the Parties (nations that have ratified the Protocol) will assess whether the control measures, as provided for in Article 2 of the Protocol, are sufficient to meet the goals for reducing ozone depletion. According to Article 6, this assessment will include a review of the current state of knowledge on technical, scientific, environmental and economic issues related to stratospheric ozone protection.

II. Today's Notice

The Agency is beginning to prepare for a meeting of the Parties, scheduled to take place in April of 1990, at which the Parties will decide on changes to the protocol's control measures. Because of the new scientific information suggesting that ozone has been depleted more than had previously been thought to have occurred, some nations are likely to call for a phase-out of the chemicals already included in the Protocol along with a freeze or reduction in the production and consumption of other chlorinated compounds that were not included in the original agreement. The Agency expects that methyl chloroform (1,1,1-trichloroethane, TCA) and carbon tetrachloride (CC14) will be among the new chemicals suggested for inclusion in the Protocol. Therefore, the EPA is putting current users of these chemical substances on notice that a freeze and/or reduction in the production and consumption of a methyl chloroform and carbon tetrachloride may be forthcoming.

The present worldwide concerns about TCA focus primarily on the chlorine emissions that occur because of current uses. EPA is particularly concerned however, about future increases in the use of TCA because of regulatory actions recently taken or which are being prepared by EPA and the Occupational Health and Safety Administration (OSHA). These regulatory actions restrict (or presumably will restrict) the use of other chlorinated solvents such as methylene chloride, perchloroethylene, and trichloroethylene by placing exposure limits on the chemical substances. These exposure limits may lead some chlorinated solvent users in the short-term to substitute the use of methyl chloroform for these other solvents instead of trying to control exposures. In addition, there are U.S. and worldwide concerns about continued uses (and emissions and subsequent exposures) of carbon tetrachloride as a solvent and as a pesticide.

EPA strongly encourages chlorinated solvent users and producers to seek low cost, long-term solutions and to use the best available controls to minimize environmental releases of all of the chlorinated solvents listed above in complying with the federal regulations mentioned. In addition, EPA wants to make clear that the Agency does not condone simply substituting one problem chemical for another, and strongly encourages the use of less objectionable chemicals or non-chlorinated solvent alternatives where possible.

More importantly, EPA wants to reinforce its earlier position as stated in the August 1988 ANPRM (53 FR 30617) that "EPA expressly does not view shifting away from CFC–113 to *other chlorinated solvents which are currently under regulatory scrutiny by EPA*, as an acceptable solution to protecting the ozone layer." This means that in stopping the use of CFC–113, the Agency does not want producers and users to replace it with solvents which are also considered ozone depletors or probably human carcinogens. The chlorinated solvents under regulatory scrutiny by EPA include methyl chloroform, methylene chloride, perchloroethylene, trichloroethylene and carbon tetrachloride.

In this ANPRM, EPA discusses the new scientific information available on methyl chloroform and explains the possible role of methyl chloroform in ozone depletion. In addition, the Agency explains why carbon tetrachloride may also be added to the list of chemicals regulated under the Protocol. EPA is seeking comments on its analysis and on the possible impact of placing limits on methyl chloroform and carbon tetrachloride by adding them to the list of chemicals regulated under the Montreal Protocol.

A. New Scientific Information

In its August 1988 ANPRM, EPA discussed new scientific information suggesting that ozone was depleting at a faster rate than the scientific community and the Agency had originally anticipated. Over an 18-month period the world's leading atmospheric scientists conducted an extensive review of the existing ground-based and satellite measurements of the rate and level of ozone depletion. The group of scientists issued an executive summary of their work in March of 1988 (The Ozone Trends Panel Report: Executive Summary; 1988).

They reported that apparent ozone decreases since 1969 of 1.7 to 3.0 percent had occurred in Northern mid-latitudes. They also stated that, "There has been a large, sudden, and unexpected decrease in the abundance of springtime Antarctic ozone over the past decade," and that CFCs were a primary cause of the Antarctic ozone hole. The authors also specifically cited methyl chloroform as an important source of chlorine that photochemically controls the abundance of ozone.

The full body of this report has not yet been released or reviewed by EPA. However, the summary clearly suggestes

that current atmospheric models may significantly underestimate the link between CFCs and ozone depletion. Applying the models used in the EPA's Regulatory Impact Analysis (RIA), the ozone depletion of the magnitude that the Ozone Trends Panel Report cites, has already occurred over the past twenty years, should not have occurred even with the CFC reduction called for by the Protocol until the year 2050. Additional research appears necessary to account for this apparent underprediction. An alternative approach can be used which looks at the risk of ozone depletion as a function of chlorine and bromine levels in the stratosphere. Future chlorine and bromine concentrations in the upper atmosphere will depend primarily on future CFC and halon emissions, and their atmospheric fate. In August 1988, EPA issued a study entitled "Future Concentrations of Stratospheric Chlorine and Bromine," (Clx Report), (Office of Air and Radiation, EPA 400/1–88/005, August 1988), which looked at chlorine and bromine levels after the implementation of the restrictions in the Montreal Protocol. The EPA found that levels of chlorine in the stratosphere would increase from 2.7 to 8 parts per billion (ppb) by 2075, even with the reductions in CFCs called for in the Protocol.

This increase would be caused not only by the continued continued use of CFCs and halons, but also by the growth in the production and use of the non-regulated chemicals such as methyl chloroform. Specifically, the study predicted that approximately 45 percent of the increase in the chlorine and bromine would be caused by emissions from the remaining CFCs and halons. An additional 35 percent of the increase in chlorine would occur as the result of methyl chloroform emissions. Furthermore, the EPA analysis showed that if methyl chloroform use increases as predicted, it would account for over 80 percent of the growth in chlorine levels associated with substances not covered by the Protocol.

The Clx Report also examined what actions would be required to stabilize chlorine at current atmospheric levels. It showed that a phase-out of CFCs and at least a freeze in methyl chloroform would be required. It is important to note however, that stabilization would not reverse past ozone depletion. To reverse past ozone depletion that the Ozone Trends Panel reports has already occurred and to return Clx levels in the stratosphere to those that existed prior to the Antarctic ozone hole, even further cuts in methyl chloroform might be required.

B. Potential for Growth in Methyl Chloroform Use

Chemical companies that produce methyl chloroform have stated that they do not expect methyl chloroform production or use to grow within the next few years. However, in the absence of limits on this chemical its production and consumption may increase substantially within the next few years for a number of reasons.

First, the Occupational Health and Safety Administration (OSHA) promulgated regulations (54 FR 2332, January 19, 1989) that reduce the Permissible Exposure Level (PEL) to exposures of perchloroethylene and trichloroethylene in the workplace. OSHA is also planning to promulgate new PEL standards for methylene chloride to a level substantially below the current level. OSHA expects that manufacturers should be able to comply with these limits by increasing ventilation in the workplace, or through the use of other materials, which are less hazardous. However, in many cases changes in workplace equipment or operating procedures may not be sufficient to meet these new standards. Solvent users may be inclined to switch to methyl chloroform, rather than try to meet the new federal standards for their current solvent.

Second, EPA may, within the next few years, further regulate perchloroethylene, trichloroethylene, and methylene chloride because the Agency classifies them as probable human carcinogens. The Agency is also concerned about the non-cancerous or other acute health effects these chemicals may have. In addition, EPA is in the process of writing a National Emission Standard for Hazardous Air Pollutants (NESHAP) which will control ambient air emissions for perchloroethylene, trichloroethylene and methylene chloride. Moreover, since these chemicals are classified as probable human carcinogens, they are targets for EPA regulations concerning wastewater discharge. More importantly, many companies worried about the stigma of a probable human carcinogen classification may use TCA instead of the other solvent because of concerns over public image, liability and insurance expenses. For these reasons, additional layers of federal regulation may increase user preference for methyl chloroform.

Third, the reduction in CFC production and import required by the EPA rule implementing the Montreal Protocol may lead some CFC users to substitute methyl chloroform for CFCs. However, the Agency has made clear that it does not view shifting from CFC–113 to other chlorinated solvents which are currently under regulatory scrutiny as an acceptable solution to protecting the ozone layer.

D. CFC Substitutes

EPA has sponsored and co-chaired with industry a variety of technological and economic workgroups to discuss alternatives to CFCs in industrial and commercial uses. For example, EPA and industry are engaged in cooperative projects to determine whether electronic components and circuit boards can be cleaned with aqueous and terpene cleaners instead of CFC–113 or methyl chloroform. In addition, the Agency has been working with chemical manufacturers and industry representatives to find out the extent to which CFC–113 and methyl chloroform can be replaced in metal cleaning or degreasing.

EPA is coordinating the review of these substitutes among various Agency offices and with other federal agencies, to ensure that current federal regulations or policies do not unnecessarily hinder the switch away from CFCs to other chemicals or processes. For example, the EPA is working with the U.S. Department of Defense (DOD) to revise ane eliminate military procurement specifications that require manufacturers to specifically use CFC–113, methyl chloroform or other chlorinated solvents in electronic, precision and metal cleaning. Eliminating restrictive specifications would allow CFC–113 and methyl chloroform to be replaced with other chemicals, non-chemicals solutions, or processes that perform equally as well or better and do not contribute to ozone depletion.

D. Carbon Tetrachloride

Carbon tetrachloride is a relatively strong ozone depletor, and in fact has a greater ozone depleting potential than any of the CFCs currently listed in the Protocol. In the U.S. it is used primarily as a feedstock to produce other CFCs. Emissions from this use were believed to be small, and therefore it was reasonable to exclude carbon tetrachloride from the original Protocol. However, atmospheric levels have been found to be greater than would be expected from past emissions estimates. Preliminary evidence suggests that in Japan, the Eastern Block countries and less developed countries, carbon tetrachloride is used in the production of pesticides, as a solvent and in the

production of synthetic rubber and dyes, among other things. Emissions estimates for these uses are still uncertain. Nevetheless, EPA believes that they may be significant and that it may be necessary to control them under the Protocol.

E. Public Comments Sought

As stated previously, EPA is issuing this ANPRM to solicit general comments on the role of methyl chloroform and carbon tetrachloride in stratospheric ozone protection efforts, and specific comments on the possible effect of adding methyl chloroform and carbon tetrachloride to the list of chemicals regulated by the Montreal Protocol. The Agency is specifically seeking comments on the following points.

(1) What substitutes exist for methyl chloroform in the following use categories: metal, precision and electronic cleaning, aerosols, and adhesives?

(2) What can EPA do to expedite and assist in finding substitutes for methyl chloroform in these use categories? What are the barriers to such substitution?

(3) Will the demand for methyl chloroform increase when the initial reduction in CFC use is effective, in July 1989?

(4) Should the international response be to freeze, reduce or eliminate methyl chloroform and carbon tetrachloride? How, and why or why not? Over what time period?

References

EPA (1988) U.S. Environmental Protection Agency, "Future Concentrations of Stratospheric Chlorine and Bromine," EPA 400/1–88/005, July 1988.

EPA (1987) U.S. Environmental Protection Agency, "Assessing the Risk of Trace Gases That Can Modify the Stratosphere," EPA 400/1–87/001, December 1987.

EPA (1987) U.S. Environmental Protection Agency, "Regulatory Impact Analysis: Protection of Stratospheric Ozone," December 1987.

EPA (1988) U.S. Environmental Protection Agency, "Regulatory Impact Analysis: Protection of Stratospheric Ozone," August 1988.

Molina, M.J. and F.S. Rowland (1974). "Stratospheric Sink for Chlorfluoromethanes: Chlorine Atom-Catalysed Destruction of Ozone." Nature, 249, 810–812.

National Aeronautics and Space Administration, (1988) "Present State of Knowledge in the Upper Atmosphere 1988: An Assessment Report," #1208, August 1988.

World Meteorological Association (WMO) (1986). "Atmospheric Ozone 1985: Assessment of Our Understanding of the Processes Controlling its Present Distribution and Change, WMO Global Ozone Research and Monitoring Project—Report No. 16 WMO, Geneva, Switzerland.

Don R. Clay,

Acting Assistant Administrator.

[FR Doc. 89–8819 Filed 4–14–89; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 89–38, RM–6517]

Radio Broadcasting Services; Flint, Harbor Beach, and Sebewaing, Michigan

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Reams Broadcasting, Inc., proposing the substitution of FM Channel 288B1 for Channel 288A at Flint, Michigan, and modification of the license for Station WWCK–FM to specify operation on Channel 288B1. The coordinates for Channel 288B1 are 43–01–18 and 83–41–00. To accommodate Channel 288B1 at Flint, Channel 279C2 must be substituted for 289C2 at Harbor Beach and Channel 267A must be substituted for Channel 280A at Sebewaing, Michigan. DCS Radio, Ltd. holds the construction permit for Channel 289C2 at Harbor Beach (BPH 870225IB) and Family Stations, Inc. holds the construction permit for Channel 280A at Sebewaing (BMPED871008ID). The coordinates for Channel 279C2 are 43–59–06 and 82–58–25. The coordinates for Channel 267A are 43–48–01 and 83–23–38. Canadian Concurrence must be obtained for the allotment of channels at all three communities. The allotments for Harbor Beach and Sebewaing will require concurrence from the Canadian government as a specially negotiated short spaced allotment in accordance with the U.S.-Canadian working agreement.

DATES: Comments must be filed on or before April 17, 1989, and reply comments on or before May 2, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Marnie K. Sarver, Donald M. Itzkoff, Pierson, Ball & Dowd, 1200–18th Street, NW., Suite 1000, Washington, DC 20036. (Counsel for Reams Broadcasting, Inc.).

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–38, adopted January 30, 1989, and released February 24, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

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

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

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

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

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

[FR Doc. 89–9025 Filed 4–14–89; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 89–37, RM–6590]

Radio Broadcasting Services; Two Harbors, Minnesota

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Twin Ports Broadcasting, Inc., permittee of Channel 282A, Two Harbors, Minnesota, proposing the substitution of Channel 282C2 for Channel 282A, and modification of the permit to specify

operation on Channel 282C2. Canadian concurrence will be sought for the allotment of Channel 282C2 at Two Harbors at coordinates 46–59–51 and 91–50–13.

DATES: Comments must be filed on or before April 17, 1989, and reply comments on or before May 2, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows:

Richard J. Bodorff, Fisher, Wayland, Cooper, & Leader, 1255—23rd Street, NW., Suite 800, Washington, DC 20037. (Counsel to the petitioner).

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–37, adopted February 2, 1989, and released February 24, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

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

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

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

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

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

[FR Doc. 89–9023 Filed 4–14–89; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 89–39, RM–6611]

Radio Broadcasting Services; Alexandria, MN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Paradis Broadcasting of Alexandria, Inc., proposing the substitution of Channel 222C2 for 224A at Alexandria, Minnesota, and modification of the license for Station KXRA–FM to specify operation on Channel 222C2. Petitioner's coordinates for Channel 222C2 are 45–54–00 and 95–39–00.

DATES: Comments must be filed on or before April 17, 1989, and reply comments on or before May 2, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows:

Frank R. Jazzo, Fletcher, Heald & Hildreth, 1225 Connecticut Avenue, NW., Suite 400, Washington, DC 20036. (Counsel for the petitioner).

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–39, adopted February 2, 1989, and released February 24, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

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

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

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

[FR Doc. 89–9024 Filed 4–14–89; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Parts 350 et al.

[FHWA Docket No. MC–89–2]

RIN 2125–AC04

Federal Motor Carrier Safety Regulations; Paperwork Reduction

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The FHWA requests comments on ways to reduce paperwork burdens imposed on motor carriers subject to the requirements of the Federal Motor Carrier Safety Regulations (49 CFR Parts 350 through 399). Changes are being considered in accordance with the requirements of the Paperwork Reduction Reauthorization Act of 1986. The Act requires regulatory agencies to set goals to reduce, by 20 percent, the paperwork burden imposed on the public by September 30, 1990.

DATE: Written comments must be received on or before July 17, 1989.

ADDRESS: All signed, written comments should refer to the docket number that appears at the top of this document and should be submitted to Federal Highway Administration, Room 4232, Office of Chief Counsel, HCC–10, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m., ET, Monday through Friday, except legal holidays. Commenters who want to be notified that the FHWA received their comments should include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas P. Kozlowski, Office of Motor Carrier Standards, (202) 366–2981; or Mr. Edward J. Mullaney, Office of Chief Counsel, HCC–10, (202) 366–1356, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to

4:15 p.m., ET, Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: Section 815(4) of the Paperwork Reduction Reauthorization Act of 1986 (1986 Act) (Pub. L. 99–500, 100 Stat. 1783–337, 44 U.S.C. 3505) requires regulatory agencies to:

(a) Set a goal to reduce, by September 30, 1987, the burden of Federal collections of information existing on September 30, 1986, by at least 5 percent; and

(b) For the fiscal year beginning on October 1, 1987, and each of the next 2 fiscal years, set a goal to reduce the burden of Federal collections of information existing at the end of the immediately preceding fiscal year by at least 5 percent.

In the past, the FHWA has made changes in the Federal Motor Carrier Safety Regulations (FMCSRs) to reduce the paperwork burden imposed on motor carriers without degrading safety. For example, in 1987, the driver's log form was replaced by the more flexible driver's record of duty status grid and several data elements were eliminated from the recordkeeping requirement, resulting in an industry wide burden reduction of several million hours. To comply with the 1986 Act, the FHWA must again seek ways to further change the regulations without affecting safety, the importance of which is universally recognized. To this end, we are asking interested parties to suggest new ideas and approaches to meet the new burden-reduction requirements.

The Office of Management and Budget (OMB) maintains a computer file of all Federal paperwork, recordkeeping, and other information collection requirements, as well as the burdens they impose upon the public. These burden-hour estimates are also contained in the Department of Transportation's Information Collection Budget (ICB), which is submitted annually to the OMB pursuant to 5 CFR 1320.10. The following is a list of recordkeeping and reporting requirements contained in the FMCSRs and currently approved by OMB.

Part	OMB No.	Title
350	2125–0536	*Motor Carrier Safety Assistance Program*—Reporting and recordation requirements in 49 CFR 350 requiring States that wish to participate in the Motor Carrier Safety Assistance Program to file grant applications for funds and, if a grant is awarded, submit quarterly and annual reports of activity. (1,764 burden hours).
383	2125–0542	*Commercial Driver's License Requirements*—Requiring a commercial drivers license, pursuant to 49 CFR 383 that will entail the driver reporting certain information to the employer and to the State licensing authorities. (496,529 burden hours).
385	2125–0038	*Motor Carrier/Shipper Operations Questionnaire*—Use of Form MC–137 soliciting motor carrier operating statistics, particularly mileage data used in determining carrier accident rates and need for safety survey. This burden will be replaced by Form MCS–150 once it is approved by the OMB. Form MCS–150 was discussed in the final rule entitled Safety Fitness Procedures (FHWA Docket No. MC–123) published in the FEDERAL REGISTER on December 19, 1988 (53 FR 50961). (5,000 burden hours).
387	2125–0074	*Endorsement of Motor Carrier Policies of Insurance*—Endorsement of Motor Carrier Policies of Insurance for Public Liability and Motor Carrier Public Liability Surety Bond Under Sections 29 and 30 of the Motor Carrier Act of 1980, retained and made available to the public as proof of financial responsibility. (13,000 burden hours).
387	2125–0518	*Minimum Levels of Financial Responsibility for Motor Carriers of Passengers*—Responsibility of promulgating and enforcing regulations governing the provisions of Section 18 of the Bus Regulatory Reform Act of 1982. (49 CFR §387.31 and §387.39) (75 burden hours).
391	2125–0065	*Driver Qualification Files (Regularly Employed and Intermittent, Casual or Occasional Drivers)*—Pursuant to 49 CFR 391.51, requiring motor carriers to maintain a qualification file for each regularly employed driver for as long as the driver is employed by that motor carrier and for 3 years thereafter; and pursuant to 49 CFR 391.63, requiring motor carriers employing drivers on an intermittent, casual or occasional basis, to obtain and retain identifying information in lieu of certain paperwork requirements for regularly employed drivers. (700,366 burden hours).
391	2125–0081	*Qualifications Certificate*—Pursuant to 49 CFR §391.65, requiring a motor carrier to retain in its files for 3 years a copy of a driver's qualification certificate in lieu of the complete driver qualification file, if the driver is regularly employed by another motor carrier. (9,631 burden hours).
391 and 394	2125–0543	*Controlled Substances Testing*—Parts 391 and 394 of the FMCSRs have been amended to require motor carriers to test their drivers for use of controlled substances (illicit drugs), in order to get drug-users out of the drivers' seats of commercial motor vehicles. The greatest part of the burden comes from the chain-of-custody and medical review requirements in Part 391. The additional accident reporting paperwork burden is relatively insignificant. (Estimated Burden Hours—1,053,961).
391 and 398	2125–0080	*Medical Qualification Requirements*—Pursuant to 49 CFR 391 and 398, rquiring drivers to have in their possession, while driving, a physician's medical certificate or a waiver issued by the FHWA in response to an application, copies of which are retained in the driver's qualification file. Also, submission of an application for the resolution by the FHWA of medical conflicts between physicians. (14,352 burden hours).
394	2125–0526	*Motor Carrier Accident Reports MCS–50T and MCS–50B*—Requirements in 49 CFR 394 that motor carriers must file accident reports with the FHWA on forms MCS–50T (truck) and MCS–50B (bus), along with related fatality notifications. (36,820 burden hours).
395	2125–0016	*Driver's Record of Duty Status*—Pursuant to 49 CFR §395.8, a driver is required to retain a copy of the driver's record of duty status for 8 days and the motor carrier to retain a copy of the record for 6 months. (12,874,171 burden hours).
395	2125–0196	*Time Records*—Requirement contained in 49 CFR §395.8(1) authorizing certain motor carriers to maintain general time records for certain drivers in lieu of the preparation of the driver's record of duty status. (10,804,553 burden hours).
396	2125–0037	*Inspection, Repair, and Maintenance and Driver Vehicle Inspection Report*—Pursuant to 49 CFR 396, requirements for the retention of inspection, repair, and maintenance records for 1 year and the retention of the vehicle inspection report for 90 days. The vehicle inspection report, or a copy, is to be carried on the vehicle for 1 day. (16,620,879 burden hours).
397	2125–0508	*Hazardous Materials Instructions and Documents*—Pursuant to 49 CFR §397.19(b), motor carriers are required to retain for 1 year the receipt signed by a driver acknowledging receipt of parking and driving documents before operating a vehicle transporting Class A or Class B explosives. (3,645 burden hours).
397	2125–0528	*Marking of Vehicles—HM Private Carriers*—Pursuant to 49 CFR 397.21, all vehicles which transport hazardous materials, which must display placards on the vehicle, and are operated by private motor carriers, are required to be labeled on both sides with the carrier's name and address. (5,833 burden hours).

RULEMAKING ACTIONS AWAITING OMB'S PAPERWORK BURDEN REVIEW

Part	Title
383	*Commercial Driver's Testing*—Approval for requiring knowledge and skills test which was published in the FEDERAL REGISTER on July 21, 1988 (53 FR 27628). The knowledge test and the skills test together equals approximately 2 million burden hours based on Section 12005 of the Commercial Motor Vehicle Safety Act of 1986 which requires truck drivers to take these tests before being issued a commercial driver's license. (Estimated Burden Hours—2,000,000).
396	*Annual Motor Vehicle Inspection Program*—Approval for inspection and recording requirements in 49 CFR 396, which could require annual or more frequent motor vehicle inspection and retention by employers of records of such inspections in compliance with Section 210 of the Motor Carrier Safety Act of 1984. (Estimated Burden Hours—13,000,000).
385	*Declaration of Safety Fitness*—Section 215 of the Motor Carrier Safety Act of 1984 directs the Secretary of Transportation, in cooperation with the Interstate Commerce Commission (ICC), to establish a procedure to determine the safety fitness of owners and operators of commercial motor vehicles, including persons seeking new or additional operating authority as motor carriers. Section 385.23 of the proposed rule on Safety Fitness Procedures requiring all unrated motor carriers to file Form MCS-150, Motor Carrier Identification Report. Additionally, motor carriers may use this form to obtain a USDOT number for their vehicles. The Safety Fitness Procedures final rule was published in the FEDERAL REGISTER on December 19, 1988 (53 FR 50961). Approval has been sought for the collection of information required in Form MCS-150. Form MCS-150 will replace Form MCS-137, Description of Motor Carrier Operations. Form MCS-150 will be used to identify previously unknown motor carriers operating in interstate commerce, to issue the USDOT number required by 49 CFR §390.21, to require motor carriers to certify that they are familiar with the FMCSRs, and to assist the FHWA in prioritizing motor carriers for safety review contacts. (Estimated Burden Hours—30,833).

At this time, the paperwork burden placed on motor carriers that has been approved by OMB is approximately 41.6 million hours per year; rules based on recent legislation and currently awaiting OMB review would add an additional 15.1 million hours to this burden. To fulfill the intent of the Paperwork Reduction Act, the FHWA, motor carrier industry, drivers, public interest organizations, and the general public must join together to consider ways to reduce this burden without degrading safety. The burden of the FHWA's motor carrier programs represents nearly all the paperwork burden that FHWA imposes on the public because of the large number of drivers, vehicles, and motor carriers subject to these rules. This is especially true for the regulations which require individual drivers to perform and document an action. The FHWA estimates that there are approximately 5 million interstate drivers subject to the FMCSRs. The FHWA estimates that 5.5 million interstate and intrastate drivers are covered by the Commercial Driver's License Requirements (Part 383), 3 million of whom are also covered by the FMCSRs. Actions which require just a short time for each driver each day, when multiplied by the number of drivers, result in quite a large annual recordkeeping burden nationally.

For purposes of focusing the agency's paperwork reduction efforts on the most burdensome requirements in keeping with congressionally mandated reduction goals, we have categorized these recordkeeping requirements into three groups, namely, (1) five requirements currently approved by OMB with burden hours over 100,000 hours, (2) nine requirements currently approved by OMB with burden hours under 100,000 hours, and (3) four new or currently approved requirements involving newly issued rulemaking actions and probable future significant burden increases. The groups are indicated below:

Group I—(Currently approved by OMB—Over 100,000 burden hours)	
Inspection, Repair and Maintenance	16,620,879
Driver's Record of Duty Status	12,874,171
Time Records	10,804,553
Driver Qualification Files	700,366
Commercial Driver's Licensing Requirements	496,529
Controlled Substances Testing	1,053,961
Total Burden Hours	42,550,459
Group II—(Currently approved by OMB—less than 100,000 burden hours)	
Motor Carrier Accident Reports (MCS-50T and MCS-50B)	36,820
Medical Qualification Requirements	14,352
Endorsement of Motor Carrier Policies of Insurance	13,000
Qualifications Certificate	9,631
Marking of Hazardous Materials—Private Carriers	5,833
Description of Motor Carrier Operations	5,000
Hazardous Materials Instructions and Documents	3,645
Motor Carrier Safety Assistance Program	1,764
Minimum Levels of Financial Responsibility for Motor Carriers of Passengers	75
Total Burden Hours	90,120
Group III—(Pending Rulemaking Actions for OMB Approval)	
Annual Vehicle Inspection Requirements	13,000,000
Commercial Drivers Testing and Licensing	2,000,000
Declaration of Safety Fitness	30,833
Total Burden Hours	15,030,833

Three examples are presented to aid the reader in suggesting ways to reduce the burden hours. The first example deals with the requirement that a driver maintain a "record of duty status," commonly referred to as a log book.

This Group I requirement is contained in 49 CFR § 395.8. Drivers are required to document their duty status for each 24-hour period and to submit the original completed record to the motor carrier 13 days following completion of the form and retain a copy of the form in his/her possession for 7 days, and that the motor carrier retain the original for each calendar month until the 20th day following the end of the succeeding calendar month. Significant reductions have already been made for this requirement. In a further effort to reduce the paperwork burden, the FHWA has explored the potential of on-board computers to fulfill the hours-of-service recordkeeping requirements. The FHWA granted waivers to ten motor carriers to allow their drivers to operate motor vehicles with automatic on-board computers for recording hours-of-service information in lieu of preparing handwritten records. These waivers were granted in a program designed to provide the FHWA with information about the applicability, accuracy, reliability, and acceptability of driver interactive computer devices. On September 30, 1988, the FHWA published a final rule (53 FR 38666, Docket MC-130) allowing, at the motor carrier's option, the use of automatic on-board recording devices in lieu of the handwritten driver's records of duty status. This final rule replaced the case-by-case review of petitions to permit such devices in lieu of the handwritten records. The FHWA expects the introduction and acceptance of automatic on-board recorders to reduce greatly the paperwork burden for motor carriers as a result of savings of time

and expense in handling, evaluating, filing, and storing records.

The burden hours borne by the motor carrier industry prior to the final rule (53 FR 38666, Docket MC–130), had been determined to be 12,874,171 hours per annum. The FHWA expects that the motor carriers will be installing these devices in increasing numbers over a 3-year period, given the advantage of utilizing the automatic on-board recording devices over the handwritten duty status record. The FHWA has estimated that the savings in time will be equal to at least 90 percent for each handwriten document prepared by the driver and 10 percent reduction in time for the motor carrier for each such record. Therefore, the FHWA anticipates nearly a 24 percent reduction (3,069,146 burden hours) over a 3-year period. The FHWA intends to reestimate the actual burden-hour reduction of this rulemaking at a later date, based on actual experience and greater utilization as more motor carriers make use of these devices. A listing of the estimated percentage of reduction of paperwork burden per year follows:

Year	Reduction of Percentage
1	8.96
2	15.94
3	23.84

A second example also involves the recordkeeping requirements in 49 CFR Part 395—Hours of Service of Drivers, specifically § 395.8(1)—Exemptions—100 air-mile radius driver. This section exempts motor carriers and drivers from the driver's record of duty status requirement when they operate within a "100 air-mile radius" of the driver's work-reporting location. Instead, each motor carrier is required to maintain and retain, for a period of 6 months, accurate and true time records showing:

(a) The time the driver reports for duty each day;

(b) The total number of hours the driver is on duty each day;

(c) The time the driver is released from duty each day; and

(d) The total time for the preceding 7 days in accordance with paragraph (j)(2) of § 395.8 for drivers used for the first time intermittently.

In this example, the FHWA may consider a proposed change to § 395.8 by deleting paragraph (b) above. Savings in the industry's paperwork burden could amount to over 5 million hours per year.

If § 395.8(b) were eliminated, the safety specialists conducting safety reviews or motor carrier investigations would complete the calculations needed to determine a specific driver's daily total hours on duty. The burden would be marginally increased in the few instances where a safety specialist examines a driver employed by a specific motor carrier and subject to the recording provisions of § 395.8.

One possible safety implication resulting from this type of change is that motor carrier management may not become aware of breaches in a drivers' hours of service when the hours are not totaled daily. A possible counter to this concern, however, is that payroll operations in most companies are geared to identifying specific accounting irregularities, such as hours worked versus required hours of work. In addition, expanding safety operations conducted by the FHWA's Office of Motor Carriers' field staff and the enhanced State enforcement programs now operating under the FHWA's Motor Carrier Safety Assistance Program (MCSAP) (a safety grant program to participating States) may be sufficient to maintain current safety enforcement rules.

A third example also from the Group I listing, is the burden hours accruing from 49 CFR Part 396, Inspection, Repair and Maintenance. This burden originates under requirements found in Section 396.11—Driver Vehicle Inspection Reports. The FHWA estimates that 16.6 million hours are expended annually by the motor carrier industry as a result of this requirement. A final rule (See 53 FR 49402, December 7, 1988) implementing recent legislation will increase the burden by another 13 million hours.

Section 396.11(a)—Report required, states "Every motor carrier shall require its drivers to report, and every driver shall prepare a report in writing at the completion of each day's work on each vehicle operated and the report shall cover at least the following parts and accessories:

—Service brakes including trailer brake connections
—Parking (hand) brake
—Steering mechanism
—Lighting devices and reflectors
—Tires
—Horn
—Windshield wipers
—Rear vision mirrors
—Coupling devices
—Wheels and rims
—Emergency equipment."

Of the 11 items listed, nine are considered critical for the safe operation of a motor vehicle. If one or more of the nine are found in unsafe hazardous condition, enforcement officials conducting roadside vehicle inspections may place the vehicle out of service.

The daily inspection of these parts and accessories has been determined by safety experts, and substantiated by accident statistics, to be vital to safe vehicle operation, The rationale involved in developing the regulation was that the driver should best know the current condition of the vehicle. A driver is around, on, in and out of a vehicle many times during a work day, in addition to driving the vehicle. Thus, the driver should know what, if any, safety equipment is working, not working, functioning intermittently, or starting to fail—such as a crack in a wheel rim. The driver can most effectively provide maintenance personnel information necessary to make repairs and prevent future mechanical failure-related accidents. The regulation also serves to inform the "next" driver who may be assigned to that particular vehicle whether the vehicle is in safe operating condition or not prior to commencing a trip.

The regulations require a driver to note only those safety-related items that are defective. All other safety items need not be listed or commented upon by the driver. Because the driver is considered to be familiar with the safety aspects or problems of a vehicle, no additional inspection is required prior to preparing the vehicle inspection report at the end of the driver's work day.

The FHWA has studied the inspection, repair and maintenance requirements carefully in past years in accordance with the requirements of the Paperwork Reduction Act of 1980, Pub. L. 96–511, 94 Stat. 2812. Further reductions in the reporting requirements set out in Part 396 have proven difficult to identify.

Comments Requested

The FHWA requests comments on possible ways to reduce the paperwork burden placed on the motor carrier industry under all parts of the FMCSRs. While comments aimed at the most burdensome requirements are particularly requested, all comments will receive full consideration, no matter how small the burden involved. Information submitted to the docket may be used in later rulemaking actions. The FHWA is especially interested in receiving substantive responses to the following questions:

(1) Are there unrecognized duplications of FMCSRs requiring paperwork that may be eliminated?

(2) What effect on safety will there be if the FHWA eliminated the paperwork

requirements related to the driver's medical examination certificate (49 CFR Part 391); the intermittent, casual, or occasional driver requirements (49 CFR Part 391); or other such paperwork requirements? Are there alternative ways to monitor these areas which would reduce paperwork burdens?

(3) Accident reporting requirements of 49 CFR Part 394 present a serious problem for the FHWA; there may be considerable under reporting. Comments are requested for ideas or suggestions that would assist in drafting proposed rulemaking to increase compliance with the accident reporting requirement without greatly increasing the paperwork burden.

(4) The FHWA is interested in exploring potential technology applications, such as, electronic data storage, retrieval and transmission, that would reduce records storage and information transmission time and costs. Can accident reports be efficiently and accurately transmitted electronically? Can motor carrier records be stored electronically, such as on computer output microfilm or optical laser disks, that would be available to the FHWA motor carrier safety specialists conducting safety compliance reviews and investigations?

(5) Would a program exempting motor carriers with superior safety performance over the past 5 years from FMCSRs recordkeeping requirements be an acceptable way to reduce the paperwork burden? Could such a program promote increased motor carrier safety while simultaneously reducing motor carrier paperwork costs? From which paperwork requirements, if any, should motor carriers with superior safety performance be exempted? What positive and negative impacts would such an exemption program have on compliance with Parts 387, 391, 394, 395 and 396 of the FMCSRs and the continued safe conduct of motor carrier operations?

(6) What other suggestions do commenters have for conducting the paperwork burden of the FHWA's motor carrier programs?

(7) Is there a better means, or a new technology, whereby the driver could record and report findings pertaining to the vehicle's condition of repair as required by 49 CFR Part 396?

(8) If your company has mechanical or electronic systems to account for drivers' hours when operating under the 100-air mile radius exemption, please explain how the system reduces, or could reduce paperwork and reduce costs arising from accounting, handling and recordkeeping.

Respondents are by no means limited to these specific examples or questions addressed in this notice, but are encouraged to identify and comment on any potential reductions in burdens that are attributable to FMCSRs. Every comment will be given full and fair consideration.

The FHWA has determined that this document contains neither a major rule under Executive Order 12291 nor a significant regulation under the regulatory policies and procedures of the Department of Transportation. A draft regulatory evaluation will be prepared based upon the data received in response to this notice.

Based on the information available to the FHWA at this time, the action taken in this rulemaking will not have a significant economic impact on a substantial number of small entities.

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

Federalism Assessment

This ANPRM requests comments on ways to reduce paperwork burdens imposed on motor carriers and their drivers subject to the requirements of the FMCSRs (49 CFR 350 through 399). The potential requirements resulting from this request for comments would directly affect motor carriers and the drivers for these motor carriers. Nothing in this document directly preempts any State law or regulation. The FMCSRs establish minimum safety regulations which, at the current time, may be supplemented by the States, except for the adoption of inconsistent regulations. Accordingly, it is certified that the policies contained in this document have been assessed in light of the principles, criteria, and requirements of the Federalism Executive Order.

List of Subjects in 49 CFR Parts 350 through 399

Highways and roads, Highway safety, Motor carriers, Driver's hours of service, Reporting and recordkeeping requirements.

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

(49 U.S.C. 3102; 49 U.S.C. App. 2505; 49 CFR 1.48)

[Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety]

Issued on April 11, 1989.

R.D. Morgan,

Executive Director.

[FR Doc. 89-9041 Filed 4-14-89; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for the Dwarf Wedge Mussel

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine endangered status for the dwarf wedge mussel (*Alasmidonta heterodon*). Critical habitat is not proposed. This freshwater mussel has declined precipitously over the last one hundred years. Once found in approximately 70 locations in 15 major Atlantic slope drainages from New Brunswick to North Carolina, it is now known from only ten localities. The extant populations occur in the Ashuelot River in Cheshire County, New Hampshire; two reaches of the Connecticut River in Sullivan County, New Hampshire, and Windsor County, Vermont; McIntosh Run in St. Mary's County, Maryland; two tributaries of Tuckahoe Creek in Talbot, Queen Anne's and Caroline Counties, Maryland; Little River in Johnston County, North Carolina; the Tar River in Granville County, North Carolina; and two Tar River tributaries in Franklin County, North Carolina. All extant populations are small, and probably decling due to continued environmenal degradation. Threats include siltation, pollution, agricultural and urban runoff, channelization, land development, and road and dam construction. This proposal, if made final, would implement Federal protection provided by the Endangered Species Act of 1973, as amended. The Service is requesting data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by June 16, 1989. Public hearing requests must be received by June 1, 1989.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Annapolis Field Office, U.S. Fish and Wildlife Service, 1825 Virginia Street, Annapolis, Maryland 21401. Comments and materials received will

be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. G. Andrew Moser at the above address (301/269–5448).

SUPPLEMENTARY INFORMATION:

Background

The dwarf wedge mussel was first described by Lea (1892) as *Unio heterodon*; it was subsequently placed in the genus *Alasmidonta*. The species name *heterodon* refers to the chief distinguishing characteristic of this species, which is the only North American freshwater mussel that consistently has two lateral teeth on the right valve, but only one on the left (Fuller 1977). It is a small mussel whose shell rarely exceeds 1.5 inches in length. The species exhibits strong sexual dimorphism with females showing posterior inflation of the shell to accommodate the marsupial gills.

The dwarf wedge mussel lives on muddy sand, sand, and gravel bottoms in creeks and rivers of varying sizes, in areas of slow to moderate current and little silt deposition. The most commonly associated freshwater mussels are *Elliptio complanata* and *Alasmidonta undulata*. Other co-occurring mussels include *Strophitus undulatus, Anodonta cataracta, Elliptio lanceolata, Elliptio fisheriana, Lampsilis radiata, Margaritifera margaritifera*.

In the species as a whole, the gravid (egg-laden) females are found from late August to June (Clarke 1981). The host fish, to which the larval mussels attach, has not been determined. *A. heterodon* recently disappeared from New Brunswick waters still supporting a diversity of other mussels, including sensitive species such as *Alasmidonta varicosa*, following construction of a causeway blocking the passage of anadromous fishes. This fact, coupled with the coastal distribution of *A. heterodon*, suggests that the host fish may be an anadromous or catadromous species (Master 1986).

The dwarf wedge mussel was once widely distributed in river systems of the Atlantic slope from New Brunswick, Canada, south to the Neuse River system in North Carolina. It was recorded from 70 localities in 15 drainages in 11 states and one Canadian province (Master 1986). River systems historically inhabited by this species included: the Petitcodiac River system in New Brunswick; the Taunton River, Agawam River, Merrimac River, Connecticut River and Quinnipiac River system in New England; the Hackensack River, Delaware River, and Susquehanna River systems in the Middle Atlantic states; the Choptank River, Rappahannock River, James River, Tar River and Neuse River systems in the southeast.

Based on the Nature Conservancy's recemt rangewide status survey (Master 1986) and other survey data, *A. heterodon* is now thought to be extirpated from all but ten small sites in five drainages in four states. The extant populations occur in the Ashuelot River in Cheshire County, New Hampshire; two reaches of the Connecticut River in Sullivan County, New Hampshire, and Windsor County, Vermont; McIntosh Run in St. Mary's County, Maryland; two tributaries of Tuckahoe Creek in Talbot, Queen Anne's and Caroline Counties, Maryland; Little River in Johnston County, North Carolina; the Tar River in Granville County, North Carolina; and two Tar River tributaries in Franklin County, North Carolina. One population of this mussel occuring in the Fort River in Hampshire County, Massachusetts, considered extant by Master (1986), now appears to be extipated.

Despite a considerable amount of unionid (freshwater mussel) field work in recent years throughout the range of this species, the few new populations discovered were mostly near previously known populations, attesting both to the coverage of historical field work and to the widespread decline of this species. There may be as few as four viable populations (Ashuelot River, Connecticut River, Tar River and Tuckahoe Creek drainages), each of which occupies a very limited area where they face an uncertain future due to threats of development, pollution, dam and bridge construction, etc. (Master 1986).

In the Federal Register of May 22, 1984 (49 FR 21675) the dwarf wedge mussel was included in category 2 of the Service's Review of Invertebrate Wildlife. Category 2 comprises those taxa for which proposed listing is possibly appropriate but for which conclusive data on biological vulnerability are not available to support a proposed rule. Completion of the Nature Conservancy's status survey provided much of the data needed to support a listing proposal.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (codified at 50 CFR Part 424) set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in Section 4(a)(1). These factors and their application to the dwarf wedge mussel (*Alasmidonta heterodon*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Habitat modification has been an important factor in the dramatic reduction in the distribution of this mussel. The damming and channelization of rivers throughout the species' range has resulted in the elimination of much formerly occupied habitat. For example, dams have converted much of the Connecticut River mainstream into a series of impoundments. Immediately upstream from each dam, conditions, including heavy silt deposition and low oxygen levels, are inimical to mussel species such as the dwarf wedge mussel. Immediately downstream from these dams, daily water level and water temperature fluctuations as a result of intermittent power generation and hypolimnetic discharges are also stressful to mussels. In some areas below dams the river banks have been stabilized and the substrate is no longer suitable for any bivalve species.

Dams may also cause a more subtle influence on this species. The Petitcodiac River in New Brunswick still provides a suitable habitat for other rare, declining, and apparently sensitive mussels such as the brook floater (*Alasmidonta varicosa*). but the dwarf wedge mussel is ow absent. In the intervening years since the dwarf wedge mussel was collected in this drainage, a downstream casuseway has acted as a dam, blocking access to the dwarf wedge mussel habitat by anadromous fishes. Although the fish host(s) of the dwarf wedge mussel is unknown, the mussel's absence from the Petitcodiac suggests the possible loss of an anadromous or catadromous fish host. A dam proposal currently threatens one of the ten known remaining populations (at Summar Falls, New Hampshire).

The disappearance of the dwarf wedge mussel from most of its historic sites can best be explained by agricultural, domestic, and industrial pollution of its aquatic habitat. Mussels are known to be sensitive to potassium (a common pollutant associated with paper mills and irrigation return water), zinc, copper, cadmium, and other elements (Havlik and Marking 1987). Pesticides, chlorine, excessive nutrients, and silt carried by agricultural runoff also present a threat to this species.

No mussels survive in several large, undammed sections of the Connecticut

and Delaware River drainages where water pollution has exerted to heavy toll on the benthic fauna. Even where water quality has improved, as in the lower Connecticut River, chemicals trapped in the sediments inhabited by mussels may impede the recovery of sensitive species (Master 1986).

One of the largest known remaining populations of the dwarf wedge mussel occurs where the Ashuelot River meanders through a golf course. The continuing decline of the dwarf wedge mussel at this site, particularly downstream of the golf course, may well be attributed to fungicides, herbicides, insecticides, and fertilizers applied to the golf course and to agricultural runoff from abutting corn fields and pastures (Master 1986). Current plans to expand the golf course would increase the portion of the mussel population that the golf course affects and thereby accelerate the population's decline.

Pollutants may also affect the mussels indirectly; nitrogen and phosphorus input cause organic enrichment and, if extreme, oxygen depletion. Acid rain may mobilize toxic metals and lead to decreased alkalinity which is inimical to most mussels. Increased acidity appears to have contributed to the recent decline of the dwarf wedge mussel in the Fort River in Massachusetts (D. Smith, Univ. of Massachusetts Museum of Zoology, pers. comm.).

Erosion and siltation resulting from land clearing and grading and construction of bridges, roads, and other structures may be especially damaging to the dwarf wedge mussel's habitat. For instance, in Massachusetts, a dwarf wedge mussel population was decimated in one small stream when "the construction of a small bridge resulted in accelerated sedimentation erosion which buried and killed many of the bivalves" (Smith 1981).

Paradoxically, some bank erosion control measures such as riprapping may also adversely affect the species. A significant portion of one of the extant Connecticut River populations was eliminated in 1987 by burial under rock riprap placed along the shore of a Vermont state part (F. Brackley, Vermont Natural Heritage Program, pers. comm.).

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Although collection was probably an insignificant factor in the species' decline, it is a serious threat to the few remaining populations. These populations are vulnerable because of their small size and because the entire population may occur in a few hundred yards of stream length. Furthermore, because of its rarity and unusual shell anatomy, the species is sought by collectors.

C. *Disease or predation.* Although the dwarf wedge mussel is presumably utilized for food by mammals such as, mink, muskrat, and raccoon, predation is not though to be a significant factor in the decline of this species.

D. *The inadequacy of existing regulatory mechanisms.* The dwarf wedge mussel is listed as a State endangered species in Maryland, Massachusetts, New Hampshire, and Vermont; no protection is afforded the species in North Carolina. Although State listings provide limited protection against taking, in most of these States it provides little or no protection of habitat. It will not be adequate to prevent the species' further decline.

E. *Other natural or manmade factors affecting its continued existence.* The dwarf wedge mussel is threatened by its limited distribution and low numbers. Most of the sites where this species occurs are isolated from each other. This creates isolated gene pools that are vulnerable to loss of genetic variability. Furthermore, because this species, like all freshwater mussels, depends on water currents to transport gametes from one individual to another, its reduced numbers and population densities decrease the likelihood of successful reproduction.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list the dwarf wedge mussel as an endangered species. This species has been extirpated from most of the localities from which it was known historically. The small size and very limited geographic extent of each of this mussel's remaining populations makes them extremely vulnerable to extirpation. Any of these small populations could be eliminated by a single catastrophic event such as a chemical spill; several face imminent threats from dam construction, bridge construction, or channelization. Threatened status would therefore not be appropriate. Critical habitat is not proposed for the reasons given in the following section.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for the dwarf wedge mussel at this time. This rare and unusual mussel is sought after by amateur and scientific collectors. Its occurrence in small, localized populations makes this species particularly vulnerable to overcollecting. Because of this, the Service believes a detailed description of the species' habitat, required as part of any critical habitat designation, could increase the species' vulnerability to illegal taking and increase law enforcement problems. Therefore, it would not be prudent to designate critical habitat for this species. Doing so would draw attention to the dwarf wedge mussel and risk depletion of its already limited populations.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and local governments and private agencies, groups, and individuals. The Endangered Species Act provide for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. Some actions may be initiated prior to listing, circumstances permitting. Recovery actions that may be beneficial to the dwarf wedge mussel include:

(1) Determination of the host fish(es);

(2) Determination of the species' sensitivities to various pollutants and water quality factors;

(3) Controlling pollution and runoff from adjacent and upstream areas of the watersheds inhabited by the mussel;

(4) Establishing conservation easements along selected river and stream corridors;

(5) Transplants of the species to unoccupied historical sites having appropriate substrate and water quality conditions. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(4) requires Federal agencies to confer informally with the

Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Federal activities that could impact the dwarf wedge mussel in the future include, but are not limited to the following: road bridge and dam construction; stream channelization; permits for effluent discharges and stream alterations; licensing of hydroelectric facilities; and registration of pesticides. One specific project having Federal involvement which could impact the species has been identified. This project involves the construction of a new bridge crossing for Maryland Route 404 over a tributary of Tuckahoe Creek in Maryland. The Service has begun coordination with the Maryland State Highway Administration regarding methods to minimize impact of this proposed project on the dwarf wedge mussel.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exception that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any endangered fish or wildlife species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions would apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be accurate and as effective as possible. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposal are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by Section 4 of the Act;

(3) Additional information concerning the rage and distribution of this species;

(4) Current or planned activities in the subject area and their possible impacts on this species.

The final decision on this proposed rule will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of publication of the proposal. Such requests must be made in writing (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, 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

Clarke, A. H. 1981. The Tribe Alasmidontini (Unionidae: Anodontinae), Part I: *Pegias, Alasmidonta,* and *Arcidens*. Smithsonian Contributions to Zoology, No. 326. 101 pp.

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Lea, I. 1829. Description of a New Genus of the Family of Naiades [etc.]. Transactions of the American Philosophical Society, new series. 3:403–456.

Master, L. 1986. *Alasmidonta heterodon:* Results of a Global Status Survey and Proposal to List as An Endangered Species. A report submitted to Region 5 of the U. S. Fish and Wildlife Service. 10 pp. and appendices.

Smith, D. 1981. Selected Freshwater Invertebrates Proposed for Special Concern Status in Massachusetts (Mollusca, Annelida, Arthropoda). Massachusetts Department of Environmental Quality Engineering, Division of Water Pollution Control. 26 pp.

Author

The primary author of this proposed rule is G. Andrew Moser, Annapolis Field Office, U.S. Fish and Wildlife Service, 1825 Virginia Street, Annapolis, Maryland 21401 (301/269–5448).

List of Subject in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

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: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411; Pub. L. 100–478, 102 Stat. 2306; Pub. L. 100–653, 102 Stat. 3825 (16 U.S.C. 1531 *et seq.*); Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. It is proposed to amend § 17.11(h) by adding the following, in alphabetical order under "CLAMS", to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
CLAMS							
* * *		*	*	*	*	*	
Mussel, dwarf wedge	Alasmidonta heterodon	U.S.A. (CT, MA, MD, NC, NH, NJ, PA, VA, VT), Canada (New Brunswick).	NA	E		NA	NA

Dated: March 22, 1989.

Susan Reece Lamson,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 89-9114 Filed 4-14-89; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 54, No. 72
Monday, April 17, 1989

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

Food and Nutrition Service

Child Nutrition Programs—Income Eligibility Guidelines

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This Notice announces the Department's annual adjustments to the Income Eligibility Guidelines to be used in determining eligibility for free and reduced-price meals or free milk for the period from July 1, 1989 through June 30, 1990. These guidelines are used by schools, institutions, and centers participating in the National School Lunch Program, School Breakfast Program, Special Milk Program for Children, and Child Care Food Program and by commodity schools. The annual adjustments are required by section 9 of the National School Lunch Act. The guidelines are intended to direct benefits to those children most in need and are revised annually to account for increases in the Consumer Price Index.

EFFECTIVE DATE: July 1, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, FNS, USDA, Alexandria, Virginia 22302, (703) 756–3620.

SUPPLEMENTARY INFORMATION: This Notice has been reviewed under Executive Order 12291 and has been classified not major. This Notice will not have an annual effect on the economy of $100 million or more, nor will it result in major increases in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions. This action will not have significant adverse effects 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.

These programs are listed in the Catalog of Federal Domestic Assistance under No. 10.533, No. 10.555, No. 10.556, and No. 10.558 and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V, and the final rule related notice published at 48 FR 29112, June 24, 1983.)

This Notice imposes no new reporting or recordkeeping provisions that are subject to OMB review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and thus is exempt from the provisions of that Act.

Background

Pursuant to sections 9(b)(1) and 17(c)(4) of the National School Lunch Act (42 U.S.C. 1758(b)(1) and 42 U.S.C. 1766(c)(4)), and sections 3(a)(6) and 4(e) of the Child Nutrition Act of 1966 (42 U.S.C. 1772(a)(6) and 1773(e)), the Department annually issues the Income Eligibility Guidelines for free and reduced-price meals in the National School Lunch Program (7 CFR Part 210), School Breakfast Program (7 CFR Part 220), Child Care Food Program (7 CFR Part 226), commodity schools (7 CFR Part 210), and the guidelines for free milk in the Special Milk Program (7 CFR Part 215). These eligibility guidelines are based on the Federal income poverty guidelines and are stated by household size.

The Department requires schools and institutions which charge for meals separately from other fees to serve free meals to all children from any household with income at or below 130 percent of the poverty guidelines. The Department also requires such schools and institutions to serve reduced-price meals to all children from any household with income higher than 130 percent of the poverty guidelines, but at or below 185 percent of the poverty guidelines. Schools and institutions participating in the Special Milk Program may, at local option, serve free milk to all children from any household with income at or below 130 percent of the poverty guidelines.

Definition of Income

"Income," as the term is used in this Notice, means income before any deductions such as income taxes, social security taxes, insurance premiums, charitable contributions and bonds. It includes the following: (1) Monetary compensation for services, including wages, salary, commisions or fees; (2) net income from nonfarm self-employment; (3) net income from farm self-employment, (4) social security; (5) dividends or interest on savings or bonds or income from estates or trusts; (6) net rental income; (7) public assistance or welfare payments; (8) unemployment compensation; (90 government civilian employee or military retirement, or pensions or veterans payments; (10) private pensions or annuities; (11) alimony or child support payments; (12) regular contributions from persons not living in the household; (13) net royalties; and (14) other cash income. Other cash income would include cash amounts received or withdrawn from any source including savings, investments, trust accounts and other resources which would be available to pay the price of a child's meal.

"Income," as the term is used in this Notice, does not include any income or benefits received under any Federal programs which are excluded from consideration as income by any legislative prohibition. Furthermore, the value of meals or milk to children shall not be considered as income to their households for other benefit programs in accordance with the prohibitions in section 12(e) of the National School Lunch Act and section 11(b) of the Child Nutrition Act of 1966 (42 U.S.C. 1760(e) and 1780(b)).

The Income Eligibility Guidelines

The following are the Income Eligibility Guidelines to be effective from July 1, 1989 through June 30, 1990. The Department's guidelines for free meals and milk and reduced-price meals were obtained by multiplying the 1989 Federal income proverty guidelines by 1.30 and 1.85, respectively, and by rounding the result upward to the next whole dollar. Weekly and monthly guidelines were computed by dividing annual income by 52 and 12, respectively, and by rounding upward to the next whole dollar.

Authority: (42 U.S.C. 1758(b)(1))

Date: April 10, 1989.

G. Scott Dunn,

Acting Administrator.

INCOME ELIGIBILITY GUIDELINES—JULY 1, 1989–JUNE 30, 1990

Household size	Reduced price meals—185 percent			Free meals—130 percent			Federal poverty guidelines		
	Year	Month	Week	Year	Month	Week	Year	Month	Week
48 Contiguous United States, District of Columbia, Guam and Territories									
1	11,063	922	213	7,774	648	150	5,980	499	115
2	14,837	1,237	286	10,426	869	201	8,020	669	155
3	18,611	1,551	358	13,078	1,090	252	10,060	839	194
4	22,385	1,866	431	15,730	1,311	303	12,100	1,099	233
5	26,159	2,180	504	18,382	1,532	354	14,140	1,179	272
6	29,933	2,495	576	21,034	1,753	405	16,180	1,349	312
7	33,707	2,809	649	23,686	1,974	456	18,220	1,519	351
8	37,481	3,124	721	26,338	2,195	507	20,260	1,689	390
For each add. family member	+3,774	+315	+73	+2,652	+221	+51	+2,040	+170	+40
Alaska									
1	13,838	1,154	267	9,724	811	187	7,480	624	144
2	18,556	1,547	357	13,039	1,087	251	10,030	836	193
3	23,273	1,940	448	16,354	1,363	315	12,580	1,049	242
4	27,991	2,333	539	19,669	1,640	379	15,130	1,261	291
5	32,708	2,726	629	22,984	1,916	442	17,680	1,474	340
6	37,426	3,119	720	26,299	2,192	506	20,230	1,686	390
7	42,143	3,512	811	29,614	2,468	570	22,780	1,899	439
8	46,861	3,906	902	32,929	2,745	634	25,330	2,111	448
For each add. family member	+4,718	+394	+91	+3,315	+277	+64	+2,550	+213	+50
Hawaii									
1	12,710	1,060	245	8,931	745	172	6,870	573	133
2	17,057	1,422	329	11,986	999	231	9,220	769	178
3	21,405	1,784	412	15,041	1,254	290	11,570	965	223
4	25,752	2,146	496	18,096	1,508	348	13,920	1,160	268
5	30,100	2,509	579	21,151	1,763	407	16,270	1,356	313
6	34,447	2,871	663	24,206	2,018	466	18,620	1,552	359
7	38,795	3,233	747	27,261	2,272	525	20,970	1,748	404
8	43,142	3,596	830	30,316	2,527	583	23,320	1,944	449
For each add. family member	+4,3487	+363	+84	+3,055	+255	+59	+2,350	+196	+46

[FR Doc. 89–9088 Filed 4–14–89; 8:45 am]

BILLING CODE 3410-30-M

Forest Service

Continental Divide National Scenic Trail, Montana-Idaho

AGENCY: Forest Service, USDA.

ACTION: Decision notice for Continental Divide National Scenic Trail, Montana-Idaho section.

SUMMARY: Pursuant to requirements of the Continental Divide National Scenic Trail Comprehensive Plan approved by the Chief of the Forest Service November 6, 1985, the Regional Foresters, Northern and Intermountain Regions in cooperation with other federal and state agencies, have completed an Environmental Assessment and selected a route for the Trail on federal lands from the U.S.-Canada border to the western boundary of Yellowstone National Park.

DATE: The Decision Notice for the selected route of the trail was signed April 7, 1989.

ADDRESSES: Copies of the Environmental Assessment and Decision Notice are available for public inspection at the following offices:

U.S.D.A., Forest Service, Regional Office, 200 E. Broadway, Missoula, MT 59801

U.S.D.A., Forest Service, Regional Office, 324-25th Street, Ogden, UT 84401

U.S.D.A., Forest Service, Washington Office, South Bldg., 12th & Independence Avenue, SW., Washington, DC 20250

U.S.D.I., National Park Service, Glacier National Park, West Glacier, MT 59936

U.S.D.I., Bureau of Land Management, Butte District Office, Industrial Park, Box 3888, Butte, MT 59702

SUPPLEMENTARY INFORMATION: Other offices of the U.S.D.A., Forest Service, where copies of the Decision Notice and Environmental Assessment can be reviewed include Forest Supervisor's offices and some Ranger District offices on the following National Forests: Flathead, Lewis and Clark, Lolo, Helena, Deerlodge, Bitterroot, Beaverhead, Salmon, Targhee and Gallatin.

John W. Mumma,

Regional Forester.

Date: April 7, 1989.

[FR Doc. 89–9071 Filed 4–14–89; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Final Approval of Amendment No. 3 to the Alaska Coastal Management Program

AGENCY: National Oceanic and Atmospheric Administration, National Ocean Service, Office of Ocean and Coastal Resource Management.

ACTION: Approval of amendment to the Alaska Coastal Management Program.

Location: Aleutians East Borough, Alaska.

SUMMARY: The Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service, National Oceanic and Atmospheric Administration (NOAA) received a request from the State of Alaska to incorporate the Aleutians East Borough (formerly Coastal Resource Service Area) Coastal Management Program (AECMP) into the federally-approved Alaska Coastal Management Program (ACMP). The State's request was made pursuant to section 306(g) of the Coastal Zone Management Act of 1972, as amended (CZMA), 16 U.S.C. 1455(g) and the regulations implementing the CZMA at 15 CFR 923.81. The AECMP creates a new coastal boundary for the ACMP in the region and establishes goals and policies for activities taking place in the Aleutians East Borough. The AECMP follows the guidelines and standards for local program development set in the ACMP and will be administered by the Borough and the State.

Notice is hereby given that the Director of the Office of Ocean and Coastal Resource Management has reviewed the amendment request and has made a determination that the ACMP as amended by the AECMP will still constitute an approvable program and that the procedural requirements of section 306(g) of the CZMA have been met.

Notice of intent to approve the amendment was published in the **Federal Register** on Wednesday, December 14, 1988, and interested parties had until January 27, 1989 to comment on the proposed changes. The proposed amendment along with the preliminary Determination of Approvability was distributed to Federal agencies and other interested parties. All comments received have been responded to and Final Findings of Approvability approved by the Director of OCRM. The Federal consistency provisions of section 307 of the CZMA shall apply to the AECMP on the date that the AECMP is filed with the Lieutenant Governor of the State of Alaska.

Inquiries regarding this program should be addressed to: James P. Burgess, Acting Regional Manager, Pacific Region, Office of Ocean and Coastal Resource Management, 1825 Connecticut Avenue NW., Washington, DC 20235, (202) 673–5158.

(Federal Domestic Assistance Catalog 11.419, Coastal Zone Management Program Administration)

Date: April 4, 1989.

Thomas J. Maginnis,

Assistance Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 89–9029 Filed 4–14–89; 8:45 am]

BILLING CODE 3510–08–M

National Marine Fisheries Service; Meeting

AGENCY: National Marine Fisheries Service, NOAA.

SUMMARY: The National Marine Fisheries Service andthe U.S. Fish and Wildlife Service will hold a joint meeting to discuss progress on the Emergency Striped Bass Research Study as authorized by the amended Anadromous Fish Conservation Act (Pub. L. 96–118).

DATE: The meeting will convene on Thursday, May 25, 1989, at 10:00 a.m., and will adjourn at approximately 3:00 p.m. The meeting is open to the public.

ADDRESS: Room 7000–A, Department of the Interior, C Street between 18th and 19th Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: David G. Deuel, Office of Fisheries Conservation and Management, National Marine Fisheries Service, Silver Spring, MD 20910. Telephone: (301) 427–2347.

Dated: April 10, 1989.

Richard H. Schaefer,

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

[FR Doc. 89–9065 Filed 4–14–89; 8:45 am]

BILLING CODE 3510–22–M

International Trade Administration

[A–484–801]

Antidumping Duty Order: Electrolytic Manganese Dioxide From Greece

AGENCY: International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: In separate investigations concerning electrolytic manganese dioxide ("EMD") from Greece, the United States Department of Commerce ("the Department") and the United States International Trade Commission ("the ITC") have determined that EMD from Greece is being sold at less than fair value and that sales of EMD from Greece are materially injuring a U.S. industry. Therefore, based on these findings, all unliquidated entries, or warehouse withdrawals, for consumption, of EMD from Greece made on or after November 14, 1988, the date on which the Department published its "Preliminary Determination" notice in the **Federal Register**, will be liable for the possible assessment of antidumping duties. Further, a cash deposit of estimated antidumping duties must be made on all such entries, and withdrawals from warehouse, for consumption made on or after the date of publication of this antidumping duty order in the **Federal Register**.

EFFECTIVE DATE: April 17, 1989.

FOR FURTHER INFORMATION CONTACT: Anne D'Alauro (202) 377–1130 or Holly Kuga (202) 377–4733, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION: The product covered by this order is electrolytic manganese dioxide from Greece. EMD was classifiable under item 419.4420 in the Tariff Schedules of the United States Annotated ("TSUSA"). EMD is currently classifiable under item number 2820.10.0000 of the Harmonized Tariff Schedule ("HTS").

In accordance with section 735(a) of the Tariff Act of 1930 ("the Act"), as amended (19 U.S.C. 1673(a)) (the Act), on March 2, 1989, the Department made its final determination that EMD from Greece was being sold at less than fair value (54 FR 8771). On April 10, 1989, in accordance with section 735(d) of the Act, the ITC notified the Department that such imports materially injure a U.S. industry.

Therefore, in accordance with sections 736 and 751 of the Act (19 U.S.C. 1673e and 1675), the Department directs United States Customs officers to assess, upon further advice by the administrating authority pursuant to section 736(a)(1) of the Act (19 U.S.C. 1673e(a)(1)), antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of EMD from Greece. These antidumping duties will be assessed on all unliquidated entries of EMD entered, or withdrawn from warehouse, for consumption on or after November 14, 1988, the date on which the Department published its "Preliminary Determination" notice is the **Federal Register** (53 FR 45793).

On or after the date of publication of this notice, United States Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated

weighted-average antidumping duty margins noted below:

Manufacturer/Producer/Exporter	Weighted-average margin Percentage
Tosoh Hellas	36.72
All others	36.72

This determination constitutes an antidumping duty order with respect to EMD from Greece, pursuant to section 736 of the Act (19 U.S.C. 1673e) and § 353.48 of the Commerce Regulations (19 CFR 353.48).

This notice is published in accordance with section 736 of the Act (19 U.S.C. 1673e) and § 353.48 of the Commerce Regulations (19 CFR 353.48)

Timothy N. Bergan,

Acting Assistant Secretary for Import Administration.

Dated: April 14, 1989.

[FR Doc. 89-9361 Filed 4-14-89; 12:14 pm]

BILLING CODE 3510-DS-M

[A-588-806]

Antidumping Duty Order: Electrolytic Manganese Dioxide From Japan

AGENCY: International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: In separate investigations concerning electrolytic manganese dioxide ("EMD") from Japan, the United States Department of Commerce ("the Department") and the United States International Trade Commission ("the ITC") have determined that EMD from Japan is being sold at less than fair value and that sales of EMD from Japan are materially injuring a U.S. industry. Therefore, based on these findings, all unliquidated entries, or warehouse withdrawals, for consumption, of EMD from Japan made on or after November 14, 1988, the date on which the Department published its "Preliminary Determination" notice in the **Federal Register**, will be liable for the possible assessment of antidumping duties. Further, a cash deposit of estimated antidumping duties must be made on all such entries, and withdrawals from warehouse, for consumption made on or after the date of publication of this antidumping duty order in the **Federal Register**.

EFFECTIVE DATE: April 17, 1989.

FOR FURTHER INFORMATION CONTACT: Anne D'Alauro (202) 377-1130 or Holly Kuga (202) 377-4733, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION: The product covered by this order is electrolytic manganese dioxide from Japan. EMD was classifiable under item 419.4420 in the Tariff Schedules of the United States Annotated ("TSUSA"). EMD is currently classifiable under item number 2820.10.0000 of the Harmonized Tariff Schedule ("HTS").

In accordance with section 735(a) of the Tariff Act of 1930 ("the Act"), as amended (19 U.S.C. 1673d(a)) (the Act), on March 2, 1989, the Department made its final determination that EMD from Japan was being sold at less than fair value (54 FR 8778). On April 10, 1989, in accordance with section 735(d) of the Act, the ITC notified the Department that such imports materially injure a U.S. industry.

Therefore, in accordance with sections 736 and 751 of the Act (19 U.S.C. 1673e and 1675), the Department directs United States Customs officers to assess, upon further advice by the administrating authority pursuant to section 736(a)(1) of the Act (19 U.S.C. 1673e(a)(1)), antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of EMD from Japan. These antidumping duties will be assessed on all unliquidated entries of EMD entered, or withdrawn from warehouse, for consumption on or after November 14, 1988, the date on which the Department published its "Preliminary Determination" notice in the **Federal Register** (53 FR 45796).

On or after the date of publication of this notice, United States Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margins noted below:

Manufacturer/Producer/Exporter	Weighted-average margin Percentage
Mitsui Mining and Smelting	77.43
Tosoh Corporation	71.91
All others	73.30

This determination constitutes an antidumping duty order with respect to EMD from Japan, pursuant to section 736 of the Act (19 U.S.C. 1673e) and § 353.48 of the Commerce Regulations (19 CFR 353.48).

This notice is published in accordance with section 736 of the Act (19 U.S.C. 1673e) and § 353.48 of the Commerce Regulations (19 CFR 353.48)

Timothy N. Bergan,

Acting Assistant Secretary for Import Administration.

Date: April 14, 1989.

[FR Doc. 89-9362 Filed 4-14-89; 12:14 pm]

BILLING CODE 3510-DS-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1989; Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to Procurement List 1989 commodities to be produced and a service to be provided by workshops for the blind or other severely handicapped.

Comments must be received on or before: May 17, 1989.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities and service listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities and service to Procurement List 1989, which was published on November 15, 1988 (53 FR 46018):

Commodities

Bandage, Gauze, Compressed, Camouflaged
6510-00-200-3180
6510-00-200-3190

Folder, File
7530-FMHA Supply Item No. 38

Enamel, Alkyd, Lusterless
8010-00-948-7388

Service

Janitorial/Custodial
Federal Building Complex in the following Oklahoma City, Oklahoma locations:
U.S. Post Office/U.S. Courthouse
215 Dean A. McGeen Avenue
Federal Building/U.S. Courthouse
200 North West Fourth Street
Alfred P. Murrah Federal Building
200 North West Fifth Street
Federal Parking Facility
200 North West Fifth Street

Beverly L. Milkman,
Executive Director.

[FR Doc. 89-9035 Filed 4-14-89; 8:45 am]
BILLING CODE 6820-33-M

Procurement List 1989 Deletions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Deletions from procurement list.

SUMMARY: This action deletes from Procurement List 1989 services which have been provided by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: May 17, 1989.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: On January 27, 1989, the Committee for Purchase from the Blind and Other Severely Handicapped published notice (54 FR 4060) of proposed deletions from Procurement List 1989, which was published on November 15, 1989 (53 FR 46018).

Deletions

After consideration of the relevant matter presented, the Committee has determined that the services listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.6.

Accordingly, the following services are hereby deleted from Procurement List 1989:

Commissary Warehouse Service
Maxwell Air Force Base, Alabama
Commissary Warehouse Service
Scott Air Force Base, Illinois

Beverly L. Milkman,
Executive Director.

[FR Doc. 89-9036 Filed 4-14-89; 8:45 am]
BILLING CODE 6820-33-M

COMMODITY FUTURES TRADING COMMISSION

Establishment of the Commodity Futures Trading Commission

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of Establishment of advisory commission.

SUMMARY: Commodity Futures Trading Commission has determined to establish the "Commodity Futures Trading Commission Regulatory Coordination Advisory Committee." As required by section 9(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. 1, section 9(a)(2); 41 CFR 101-6.1007; and OMB Bulletin No. 89-08, the Commission has consulted with the Committee Management Secretariat of the General Services Administration and with the Office of Management and Budget. The Commission certifies that creation of this Advisory Committee is necessary and in the public interest in connection with the performance of duties imposed on the Commission by the Commodity Exchange Act ("Act"), 7 U.S.C. 1 *et seq.*, as amended. This notice is published pursuant to section 9(a)(2) of the federal Advisory Committee Act, 5 U.S.C. App. I, section 9(a)(2) and 41 CFR 101-6.1015.

FOR FURTHER INFORMATION CONTACT: Robert J. MacKay, Chief of Staff (Tel. (202) 254-3343) or Helen G. Blechman, Assistant General Counsel (Tel. (202) 254-9880), Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION: The 1980's have seen a technological and financial revolution that has spawned a worldwide market in financial instruments and information. The world's stock, stock index futures and options markets have become increasingly automated and economically linked in terms of financial instruments, trading strategies, market participants and clearing and trading mechanisms.[1] the degree of this linkage was demonstrated during the October 1987 price break.

This internationalization and linkage of markets presents the CFTC and other domestic and foreign regulators and industry participants with numerous challenges. Among these challenges is the need to identify: those areas where regulators and industry participants can improve regulatory coordination; those areas where a regulatory gap may exist; and those areas where there may be duplication of effort, and therefore a need to take certain corrective measures.

In order to address this need and the Commission's obligation to regulate the futures and options markets, which "are affected with a national public interest," the Commission is establishing a Regulatory Coordination Advisory Committee. *See* Section 3 of the Commodity Exchange Act, 7 U.S.C. 5. This advisory committee will conduct public meetings and submit reports and recommendations to the Commission on issues concerning regulatory coordination among domestic and international regulators and others interested in or affected by financial, agricultural and other commodities markets regulated by the CFTC. These issues will include:

1. Regulatory coordination on critical issues that affect related domestic and international financial markets and institutions;

2. Considerations raised by the development of separate but economically linked futures, stock, options and off-exchange markets in the United States and abroad, including, but not limited to the regulatory costs involved and the problems posed by regulatory costs involved and the problems posed by differing and/or duplicative regulatory frameworks;

3. Identification of methods to improve and enhance the sharing of information relating to enforcement, market conditions and financial risk among domestic and international regulators;

4. Considerations raised by a changing and increasingly linked domestic and international marketplace, including, but not limited to, the identification of methods to improve coordination among domestic and international regulatory structures to enhance operational efficiency and capabilities of users; and

5. Improved credit, clearing and payment systems to ensure the necessary coordination within and between markets.

The Commission believes that the most efficient and effective means of gaining the necessary understanding of these questions is to receive practical advice and policy suggestions on a regular basis from other domestic and foreign regulators and users of these markets.

The Chairman of the Commission has determined that this Advisory Committee is essential to the conduct of agency business and is in the public interest. The reports, recommendations and general advice from this Committee

[1] *See* January 1988 Report of the Presidential Task Force on Market Mechanisms ("Brady Report") at 69.

will enable the Commission to assess possible statutory, regulatory or policy alternatives and practical considerations in a rapidly growing and changing industry and global marketplace, enabling the Commission to better respond to existing problems and to anticipate future ones. This Advisory Committee will serve a unique and special function, since it will for the first time bring together in a "round table" setting, those diverse private and governmental entities that are interested in or affected by the world's financial, agricultural and other commodities markets. Providing such a forum for the exchange of information among domestic and foreign regulators and market users will keep the Commission apprised of highly technical and complex competitive regulatory issues. The Commission believes that the regular periodic advice and recommendations that this Advisory Committee will provide are important to developing better intermarket coordination and information sharing. Such developments would be consistent with the Commission's power under the Commodity Exchange Act—to cooperate and to share information with Federal, state, and foreign departments and agencies. *See* 7 U.S.C. 12(e), 16(a).

Chairman Wendy L. Gramm will serve as Chairman and Designated Federal Official of this Advisory Committee. The members of the Advisory Committee shall be composed of, but not limited to, representatives of other United States and foreign regulatory and Executive agencies, as well as representatives of financial, agricultural and other market participants in the United States and abroad. In addition, representatives of accounting firms, academia and general public participants will be considered for membership. This cross-section of interested and affected persons and groups will provide a balanced membership in terms of points of view represented, since the members will represent the concerns and practical considerations of diverse domestic and international regulators, participants and others interested in or affected by financial, agricultural and other commodities markets under the Commission's jurisdiction.

Issued in Washington, DC, on April 11, 1989, by the Commission.

Lynn K. Gilbert,

Deputy Secretary of the Commission.

[FR Doc. 89-9115 Filed 4-14-89; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Department of the Army

Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 8-19, May 1989.

Time of Meeting: Variable.

Place:

8-12 May—Japan
13-14 May—Travel
15-16 May—Korea
17—Travel
18-19 May—Hawaii

Agenda: The Army Science Board 1989 Summer Study on International Cooperation and Data Exchange to Enhance the Army's Technology Base will conduct a data gathering field trip with the major objective of finding out how well the current system is operating in the realm of International Cooperation and Data Exchange. The Army Science Board will attempt to get both the host country and the U.S. viewpoint at each location. This meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee.

Contact the Army Science Board Administrative Officer, Sally Warner, for further information at (202) 695-3039 or 695-7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 89-9069 Filed 4-14-89; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF ENERGY

Office of Energy Research

Health and Environmental Research Advisory Committee; Open Meeting

Pursuant to the provision of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: Health and Environmental Research Advisory Committee (HERAC).

Date and Time:

May 15, 1989—9:00 a.m.-5:00 p.m.
May 16, 1989—9:00 a.m.-12:00 Noon.

Place: The Compri Hotel, 805 Russell Avenue, Gaithersburg, MD 20879.

Contact: George D. Duda, Office of Health and Environmental Research (ER-72), Office of Energy Research, Department of Energy, Washington, DC 20545, telephone: 301-353-3651.

Purpose of the Committee: To provide advice on a continuing basis to the Secretary of the Department of Energy (DOE), through the Director of Energy Research, on the many complex scientific and technical issues that arise in the development and implementation of the Health and Environmental Research (HER) program.

Tentative Agenda: Briefings and discussions of:

May 15, 1989

- Overview of HER Program
- Report from HERAC Subcommittee on Nuclear Medicine
- Report from HERAC Subcommittee on Global Change
- Public comment (10 minute rule)

May 16, 1989

- New Business Discussion
- Public comment (10 minute rule)

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact George D. Duda at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts: The transcript of the meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on April 11, 1989.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 89-9067 Filed 4-14-89; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. QF87-59-002]

Panther Creek Operating Limited Partnership; Application for Commission Recertification of Qualifying Status of a Small Power Production Facility

April 12, 1989.

On March 27, 1989, Panther Creek Operating Limited Partnership (Applicant) of Griffin Road North, 5 Waterside Crossing, Windsor, Connecticut 06095-0500, submitted for filing an application for recertification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made the submittal constitutes a complete filing.

The proposed facility was initially certified as a qualifying small power production facility on May 21, 1987, Panther Creek Energy, Inc., 39 FERC ¶ 61,190 (1987). On October 19, 1987, Applicant requested recertification of the facility to reflect the inclusion of approximately forty-two miles of 69 Kv transmission line. The length of the transmission line was subsequently changed to approximately thirty miles. Applicant stated that the proposed transmission line would interconnect the facility, which is located in Pennsylvania Power and Light Company's service territory, with the transmission system of the Metropolitan Edison Company (Met Ed) and that the transmission line would be utilized to transmit the qualifying facility's electric power output to Met Ed and to receive startup, backup and maintenance power services from Met Ed. Recertification of the facility as a qualifying small power production facility was granted on February 25, 1988, 42 FERC ¶ 62,172 (1988).

The instant recertification is requested due to Applicant's proposed relocation of the facility by approximately 1¼ miles to a site north of Route 54 in Nesquehoning Borough, Pennsylvania. Additionally, Applicant proposes to utilize alternate banks of anthracite coal refuse material as the primary energy source of the facility. In all other respects, the operation and configuration of the facility remains essentially the same.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. 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 petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-9104 Filed 4-14-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 8718-003 Montana]

Dan J. Brutger; Availability of Environmental Assessment

April 6, 1989.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for minor license for the proposed Lewis Creek Hydroelectric Project located on Lewis Creek in Park County, near Emigrant, MT, and has prepared an Environmental Assessment (EA) for the proposed project. In the EA, the Commission's staff has analyzed the potential environmental impacts of the proposed project and has concluded that approval of the proposed project with appropriate mitigation measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the public Reference Branch, Room 1000, of the Commission's offices at 825 North Capitol Street NW., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 89-9102 Filed 4-14-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 9482-002 Montana]

Wisconsin-Noble; Availability of Environmental Assessment

April 6, 1989.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for minor license for the proposed Wisconsin-Noble Project located on Wisconsin Creek and Noble Fork in Madison County, near Sheridan, Montana, and has prepared an Environmental Assessment (EA) for the proposed project. In the EA, the Commission's staff has analyzed the potential environmental impacts of the proposed project and has concluded that approval of the proposed project, with appropriate mitigation measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 1000, of the Commission's offices at 825 North Capitol Street NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 89-9101 Filed 4-14-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM89-2-1-000]

Alabama-Tennessee Natural Gas Co.; Proposed Changes in FERC Gas Tariff

April 11, 1989.

Take notice that on April 6, 1989, Alabama-Tennessee Natural Gas Company (Alabama-Tennessee), Post Office Box 918, Florence, Alabama 35631, tendered for filing Second Revised Sheet No. 4A to its FERC Gas Tariff, First Revised Volume No. 1. Such tariff sheet is proposed to become effective May 1, 1989.

Alabama-Tennessee states that the filing is to adjust the currently effective take-or-pay surcharge rates to its customers to reflect increases in the amount being billed to by Tennessee Gas Pipeline Company. Alabama-Tennessee asserts that the allocation methodology utilized is that approved by the Commission in Docket Nos. RP88-205-001 and TM89-1-1-000. Alabama-Tennessee further states that such filing is being made pursuant to § 26.1(a) of its tariff.

Alabama-Tennessee is amortizing the increased take-or-pay costs over a thirty-six (36) month period. According to Alabama-Tennessee, that is the maximum amortization period allowed by this Commission in FERC Docket No. RP88-191

Alabama-Tennessee has requested any necessary waivers of the Commission's Regulations in order to permit the tariff sheets to become effective as proposed.

Alabama-Tennessee states that copies of the tariff filing have been mailed to all of its jurisdictional customers and affected State Regulatory Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rule 211 or Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR §§ 385.211 and 385.214). All such motions or protests should be filed on or before April 18, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-9111 Filed 4-14-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2768-002—Massachusetts]

Linweave, Inc.; Establishing Procedures for Relicensing and a Deadline for Submission of Final Amendments

April 6, 1989.

The license for the A'bion Mill (A Wheel) Project No. 2768, located on the Holyoke Canal, off the Connecticut River, in Hamden County, Massachusetts, expries on February 28, 1991. The statutory deadline for filing applications for new license was February 28, 1989. An application for new license has been filed as follows:

Project No.	Applicant	Contact
P-2768	Linweave, Inc., 10 Linweave Drive, Holyoke, MA 01040.	Mr. Robert Belsky, 10 Linweave Drive, Holyoke, MA 01040.

Pursuant to section 15(c)(1) of the Federal Power Act the deadline for applicant to file final amendments, if any, to its application is May 22, 1989.

The following is an approximate schedule and procedures that will be followed in processed the application.

Date	Action
Feb. 9, 1989.	Commission notifies Linweave, Inc. of any deficiencies in its application.
Feb. 21, 1989.	Applicant files all corrections of deficiencies.
Mar. 17, 1989.	Commission notifies applicant that its application has been accepted. The notification of acceptance will specify the need for additional information, if any, and the date information is due.
Apr. 1, 1989.	Commission issues public notice of the application describing proposals and establishing dates for filing motions to intervene, comments, protests, and agency recommendations.

Upon receipt of all additional information and the information filed in response to the public notice of the acceptance of the application, the Commission will evaluate the application in accordance with applicable statutory requirements and take appropriate action on the application.

Any questions concerning this notice should be directed to Charles T. Raabe at (202) 376-9778.

Lois D. Cashell,

Secretary.

[FR Doc. 89-9100 Filed 4-14-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2766-002-Massachusetts]

Linweave, Inc.; Establishing Procedures for Relicensing and a Deadline for Submission of Final Amendments

April 12, 1989.

The license for the Albion Mill (D Wheel) Project No. 2766, located on the Holyoke Canal, off the Connecticut River, in Hamden County, Massachusetts, expires on February 28, 1991. The statutory deadline for filing applications for new license was February 28, 1989. An application for new license has been filed as follows:

Project No.	Applicant	Contact
P-2766	Linweave, Inc., 10 Linweave Drive, Holyoke, MA 01040.	Mr. Robert Belsky, 10 Linweave Drive, Holyoke, MA 01040.

Pursuant to section 15(c)(1) of the Federal Power Act the deadline for applicant to file final amendments, if any, to its application is May 31, 1989.

The following is an approximate schedule and procedures that will be followed in processing the application.

Date	Action
Feb. 9, 1989.	Commission notifies Linweave, Inc. of any deficiencies in its application.
Feb. 21, 1989.	Applicant files all corrections of deficiencies.
Mar. 17, 1989.	Commission notifies applicant that its application has been accepted. The notification of acceptance will specify the need for additional information, if any and the date information is due.
Apr. 1, 1989.	Commission issues public notice of the application describing proposals and establishing dates for filing motions to intervene, comments, protests, and agency recommendations.

Upon receipt of all additional information and the information filed in response to the public notice of the acceptance of the application, the Commission will evaluate the application in accordance with applicable statutory requirements and take appropriate action on the application.

Any questions concerning this notice should be directed to Charles T. Raabe at (202) 376-9778.

Lois D. Cashell,

Secretary.

[FR Doc. 89-9103 Filed 4-14-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2543 Montana]

Montana Power Co.; Intent To File an Application for a New License

April 6, 1989.

Take notice that on January 10, 1989, Montana Power Company, the existing licensee for the Milltown Hydroelectric Project No. 2543, late filed a notice of intent to file an application for a new license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Pub. L. 99-495. The original license for Project No. 2543 was issued effective May 1, 1965, and expires December 31, 1993.

The project is located on Clark Fork River in Missoula County, Montana. The principal works of the Milltown Project include a dam with a 244-foot-long concrete abutment wall, a 45-foot-high, 152-foot-long concrete gravity section integral with the powerhouse, a 52-foot-long concrete sluice section with gates and a 216-foot-long rock crib spillway; a reservoir of 300 acre-feet at elevation 3,260 feet m.s.l.; a powerhouse with an installed capacity of 3,040 kW; transformers and transmission line connection; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, the licensee is required to make available certain information described in Docket No. RM87–7–000, Order No. 496 (Final Rule issued April 28, 1988). A copy of this Docket can be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street, NE, Washington, DC 20426. The above information as described in the rule is now available from the licensee at 40 East Broadway, Butte, Montana 59701.

Pursuant to section 15(c)(1) of the Act, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 89–9099 Filed 4–14–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP89–142–000]

Northern Natural Gas Co., Division of Enron Corp.; Petition for Extension of Limited Waiver

April 11, 1989.

Take notice that on April 3, 1989, Northern Natural Gas Company, Division of Enron Corp. (Northern) filed a petition requesting an extension of the limited waiver of § 154.302(j) of the Commission's regulations and a waiver of such other Commission regulations as may be appropriate to permit it to flow through its Purchase Gas Adjustment (PGA) clause the costs of ethane and/or an ethane mixture purchased by Northern and injected into its system supply during a period commencing May 1, 1989 and extending through April 30, 1990. Northern states that it was granted an extension of the waiver on February 25, 1988 under Docket No. RP88–51–000, which will expire on April 30, 1989. Northern states that the original intent of its petition remains unchanged from the original order.

Northern states it will purchase ethane only when it is economically prudent to do so based on a consideration of the price of alternate supplies, dependability of the supply, and time required to deliver the supplies to the market. Northern points out that it does not anticipate such ethane purchases will involve any changes or additions to its facilities.

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 Rules 214 and 211 of the Commission's Rules of Practice and Procedure [18 CFR 385.214, 385.211 (1989)]. All such motions or protests should be filed on or before April 18, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89–9106 Filed 4–14–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP89–84–001 and RP88–228–014]

Tennessee Gas Piepline Co.; Filing of Second OCS Rate Election

April 11, 1989.

Take notice that on April 5, 1989, Tennessee Gas Pipeline Company (Tennessee) submitted for filing a second notification of its election to continue to use, after April 1, 1989, its current rates for certain OCS transportation services rendered pursuant to the following Tennessee Rate Schedule:

Firm Transportation

Rate Schedules T–43, T–44, T–45, T–46, T–47, T–50, T–62, T–98, T–128 and T–162.

Interruptible Transportation

Rate Schedules T–24, T–30, T–31, T–36, T–53, T–56, T–64, T–65, T–67, T–68, T–69, T–70, T–71, T–76, T–77, T–78, T–80, T–81, T–82, T–83, T–84, T–85, T–86, T–89, T–91, T–92, T–94, T–95, T–99, T–100, T–101, T–102, T–103, T–108, T–109, T–110, T–111, T–113, T–116, T–117, T–119, T–120, T–121, T–122, T–123, T–124, T–125, T–126, T–127, T–129, T–130, T–131, T–133, T–134, T–135, T–136, T–137, T–138, T–139, T–140, T–141, T–142, T–144, T–145, T–146, T–147, T–148, T–150, T–151, T–152, T–153, T–154, T–156, T–157, T–158, T–159, T–160, T–161, T–163, T–164, T–165, T–166, T–167, T–168, T–169, T–170, T–171, T–172, T–177, and T–178.

Tennessee states that the filing is made to comport with the Commission's definition of OCS transportation service as explained in the Order Accepting and Suspending Tariff Sheets and Consolidating Proceedings issued March 31, 1989 in the captioned dockets.

Tennessee states that copies of its filing are available for inspection at its principal place of business in the Tenneco Building, Houston, Texas and have been mailed to all parties and effected customers.

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 Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 18, 1989. Protests will be considered by the Commission in determining the appropriate actions 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. 89–9108 Filed 4–14–89; 8:45 am]

BILING CODE 6717–01–M

[Docket No. RP89–145–000]

Transcontinental Gas Pipe Line Corp.; Tariff Filing

April 11, 1989.

Take notice that on April 7, 1989, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing the following tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1:

Original Sheet No. 204–A

The proposed effective date of the revised tariff sheet is May 8, 1989.

Transco states that the purpose of this filing is to revise Transco's currently effective FERC Gas Tariff so as to require under the tariff that shippers on Transco's system reimburse Transco for the costs which Transco incurs in removing and disposing polychlorinated biphenyls (PCBs), and that shippers indemnify Transco for any liability which may result therefrom, or from the transportation of gas containing PCB—contaminated liquids. Transco states that, through its testing procedures, it has identified contamination by PCBs of the liquid hydrocarbons at certain parts of its system as a result of the receipt of gas from certain upstream pipelines at interconnections between Transco and such other pipelines. Transco states that in that regard, it has installed, and may additionally install in the future, equipment to remove contaminated

liquids before they enter Transco's system. Transco avers that the proposed tariff sheets would provide Transco with an alternative under the tariff to denying receipt of gas at such points.

Transco states that copies of the filing have been served upon its customers, state commissions, and other interested parties.

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, 823 North Capitol Street NE., Washington, DC 20428, 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 April 18, 1989. 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. 89-9109 Filed 4-14-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-99-001]

Transcontinental Gas Pipe Line Corp.; Proposed Waiver of Tariff Provisions

April 11, 1989.

Take notice that on April 3, 1989, Transcontinental Gas Pipe Line Corporation (Transco) requested the Commission to waive its regulations to allow Transco to waive the daily restrictions reflected in its tariff on injections of gas purchased from third-party sellers, effective April 1, 1989 until June 30, 1989.

Transco states that it has been engaged in discussions with its customers regarding the settlement of various issues and proceedings which relate to the Commission's Order Nos. 436 and 500, and the implementation of such orders on the its system. In that regard, on April 5, 1988, Transco filed proposed revisions to its Rate Schedules GSS, LSS, and LGA to allow customers which have converted a portion of their firm sales entitlements to firm transportation service to inject into Transco's eastern storage facilities quantities of gas not purchased from Transco equivalent to such conversion percentages. Pursuant to the provisions of Transco's tariff sheets, injections of gas quantities not purchased from Transco are limited on a daily and total quantity basis to the percentage of each customer's daily firm purchase entitlement from Transco which had been permanently converted to firm transportation service.

Transco states that, as part of the overall settlement, during the interim period effective April 1, 1989 until June 30, 1989, pending Commission approval of its settlement, Transco agreed to waive the daily restrictions reflected in its tariff on injections of gas purchased from third-party sellers.

Transco requests the Commission to waive its regulations to the extent necessary to effectuate the waiver during the interim period. Transco submits that the proposed waiver is not in conflict with any Commission regulation or order and is consistent with the proposed settlement and Commission policies enunciated in Order Nos. 436 and 500. In addition, Transco submits that the instant waiver is being granted on a non-discriminatory basis and is not preferential to any customer receiving storage service on its system.

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 Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1988)). All such motions or protests should be filed on or before April 18, 1989. 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. 89-9107 Filed 4-14-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-128-001]

Transwestern Pipeline Co.; Filing

April 11, 1989.

Take notice that on April 6, 1989, Transwestern Pipeline Company (Transwestern) filed Substitute Fourth Revised Sheet No. 32 and Substitute 1st Revised Sheet No. 29A to its FERC Gas Tariff, Second Revised Volume No. 1, to be effective May 1, 1989.

Transwestern states that this filing corrects a couple of key phrases on the tariff sheets that were originally filed on March 31, 1989.

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 Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1988)). All such motions or protests should be filed on or before April 18, 1989. 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. 89-9110 Filed 4-14-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP82-114-016]

Williams Natural Gas Co.; Proposed Changes in FERC Gas Tariff

April 11, 1989.

Take notice that on April 4, 1989, Williams Natural Gas Company (WNG) tendered for filing revised tariff sheets to its FERC Gas Tariff.

WNG submits that the sheets are filed in substitution for those filed on March 6, 1989 in compliance with the Commission's orders of November 4, 1988 and February 1, 1989 in this docket. WNG proposes that the tariff changes ordered by the Commission be made effective on January 1, 1989.

WNG states that copies of the filing were mailed to all of WNG's jurisdictional customers, and interested state commissions, as well as the parties listed on the Commission's official service list compiled in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions or protests should be filed on or before April 18, 1989. 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. 89-9112 Filed 4-14-89; 8:45 am]
BILLING CODE 6717-01-M

Southwestern Power Administration

Federal Hydroelectric Power; Power Allocation Policy

AGENCY: Department of Energy, Southerwestern Power Allocation.

ACTION: Adoption of a policy for the allocation of power and energy from Federal hydroelectric power projects.

SUMMARY: The Southerwestern Power Administration (SWPA) published the "Policy for the Allocation of Power and Energy from Federal Hydroelectric Power Projects" in the **Federal Register** (52 FR 29881) dated August 12, 1987. Subsequent to that publication, SWPA received several comments which expressed concern over a perceived lack of opportunity to comment on two particular phrases in the policy. On November 9, 1988, SWPA published in the **Federal Register** (53 FR 45381) the "Notice of Opportunity to Provide Comments on Specific Phrases in the Power Allocation Policy."

Three letters received containing comments on the November 9, 1988, notice. One comment had been answered previously and did not pertain to the phrases in question. Summaries of the other comments received and SWPA's responses follow.

1. Comment—The Final Policy would reserve a portion of all power available for allocation for new customers. If the Final Policy, as drafted, is adopted, ten percent of the power generated at an existing project which became available for allocation would be reserved for new customers. It is our position that the new customers should be given an opportunity to purchase power generated at new projects, but that 100 percent of power generated at existing projects should be allocated to those customers who have supported the SWPA system in the past.

SWPA Response—The Power Allocation Policy provides that 10 percent of the power from new projects available for allocation, other than power allocated to the non-Federal project sponsor, would be allocated to new customers. New Projects include new hydroelectric power facilities being constructed at new or old water resource projects with or without existing hydroelectric power facilities. The Power Allocation Policy also provides that 10 percent of the power which becomes available for allocation from existing hydroelelctric power facilities will be allocated to new customers. In that case, power could become available from a variety of reasons including, but not limited to, upgrading of equipment, new operating criteria, and changes in operational agreements. Power may also become available if an existing customer relinquishes or loses its allocation. In the first two scenarios, the power made available for allocation had not been previously allocated; therefore, revenues had not been received from the sale of that power to apply to the repayment. In the scenario where an existing customer relinquishes or loses its allocation, only that existing customer is impacted. In all of the scenarios, we believe the existing customers as a group would not be adversely impacted by the new customers receiving 10 percent and the existing customers receiving 90 percent of the power available for allocation.

2. Comment—The Allocation Notice clarifies any ambiguity by reaffirming that "present announced policy is that capacity power allocations will continue to be honored beyond present contract commitments (with available resources) under SWPA's allocation policy. . . ." We are also satisfied with SWPA's intent "to renew power allocations when existing contracts expire," subject to adequate operational support.

SWPA Response—We are pleased the November 9, 1988, Notice has helped clarify the Power Allocation Policy.

3. Comment—The information in the Notice provides needed assurance that existing and future Federal hydroelectric power will continue to be made available to preference power customers. We encourage your efforts to maintain an equitable allocation process to assure the benefits of Federal hydroelectric power accrue to the preference community.

SWPA Response—SWPA appreciates the support being provided by the existing customers.

Therefore, based on the comments received from the November 9, 1988, Notice and the evaluation of those comments, SWPA determines that no changes are warranted in the "Policy for the Allocation of Power and Energy from Federal Hydroelectric Power Projects" in the **Federal Register** (52 FR 29881) dated August 12, 1988.

FOR FURTHER INFORMATION CONTACT: Francis R. Gajan, Director of Power, Marketing, Southwestern Power, Administration, P.O. Box 1619, Tulsa, Oklahoma 74101.

Issued at Tulsa, Oklahoma, on March 21, 1989.

J.M. Shafer,
Administrator, Southwestern Power Administration.
[FR Doc. 89-9138 Filed 4-14-89; 8:45 am]
BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3556-1]

Formation of an Agency Workgroup to Consider Uniform Standards for Electronic Reporting of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice and request for public comment.

SUMMARY: The Environmental Protection Agency is establishing an Agency-wide workgroup to consider developing and instituting uniform standards for electronic reporting of data. Such standards would allow the regulated community to make electronic submissions to EPA, by specifying the format in which the data must be presented in an electronic or magnetic medium. The purpose of this notice is to announce the establishment of the Electronic Reporting Standards Workgroup, and to solicit both public comments on the proposed effort and information on any relevant electronic data standards now in use in the private sector. Response to this request is strictly voluntary.

DATE: Comments should be submitted by June 16, 1989.

ADDRESSES: If you wish to provide comments or information in response to this notice, please submit them by June 16, 1989 to David Schwarz, Environmental Protection Agency, Office of Policy, Planning, and Evaluation (PM-223), 401 M Street SW., Washington, DC 20460. Comments should be accompanied by a brief cover letter, indicating that they are responses to this **Federal Register** notice. We will make all comments and information available for public inspection at Room 3313, Waterside Mall, EPA Headquarters, 401 M Street SW., Washington, DC 20460. If you wish to inspect these comments, please contact David Schwarz at (202) 382-2706, to schedule a mutually convenient time.

SUPPLEMENTARY INFORMATION:

Background

To carry out its environmental programs, EPA needs to collect a wide

range of data from the regulated community. We now receive most of this data on paper, even though submitters keep much of it electronically, and the data is often destined for computerized databases at EPA. The Agency would therefore like to consider the possibility of allowing submitters to report this data electronically, either by transmission over telephone line or by submitting the data on a magnetic medium (e.g., floppy disks or magnetic tape). We believe that giving submitters this option could result in substantial cost savings for the Agency and the regulated community, and provide such other benefits as improving the overall quality of the data by reducing the opportunity for transcriptional errors.

EPA is aware that many private organizations have already successfully instituted electronic reporting for routine business transactions by means of electronic data interchange (EDI). To implement EDI, the American National Standards Institute (ANSI) has developed the "ANSI X.12 Data Interchange Standards", which appear to have wide application in the private sector and in some government agencies. These standards specify how data must be represented in an electronic medium and ensure that all data transmitted among EDI participants conform to the same electronically recognizable format. Given these standards as a platform, the private sector has erected the software and hardware infrastructure for a reliable and cost-effective system of EDI.

The private sector's success in using the ANSI X.12 standards clearly demonstrates the role that uniform data standards can play in fostering electronic reporting. The Agency therefore wishes to consider the utility and feasibility of setting electronic reporting standards for the data that our programs receive from the regulated community. Given the example of EDI, such standards—applicable *uniformly* across all of the Agency's environmental programs—may be at least a necessary foundation for a coherent Agency-wide approach to electronic reporting. We believe that only by taking such an approach can the Agency and the regulated community realize the full economic benefits of electronic reporting. For these reasons, EPA has established an Agency-wide workgroup to assess the merits of uniform standards for the electronic reporting of technical and administrative data required for the Agency's environmental programs. The workgroup will then proceed to develop and institute such standards as appropriate.

In announcing the establishment of the Electronic Reporting Standards (ERS) Workgroup, this advance notice solicits public comments and information on existing capabilities for electronic reporting. Specifically, we wish to know whether the ANSI X.12 standards would be a good model for purposes of reporting data to EPA—whether via transmission over telephone line or on a magnetic medium. We also wish to know what other data standards may be in use in industry and in government, and how we should work with other organizations in the private and public sectors in instituting uniform electronic reporting standards. By engaging in a public dialogue at an early stage, we hope to benefit from the experiences of the regulated community, and the private sector generally, in considering electronic data standards. We also hope to benefit from the experiences of other federal agencies and State and local governments. We hope that such dialogue will help ensure that any data standards we ultimately develop will be as compatible as possible with current practices, both in industry and in government.

Requirements for Electronic Reporting Standards

EPA believes that any electronic reporting standards that the Agency ultimately adopts should satisfy the following requirements:

1. They must be uniform across the Agency.
2. They must be flexible enough to accommodate the different information requirements of each of EPA's program offices.
3. They must be compatible, to the extent possible, with the standards that are already in wide use in the regulated community, in EPA program offices, and at other Federal and State agencies.
4. They must not dictate the use of particular computer software and hardware, and must be compatible with any standard mode of electronic data transfer, whether via transmission over telephone line or on a magnetic medium.

We would like public comment on the appropriateness of these four requirements, as well as suggestions for additional requirements that the ERS Workgroup may consider.

Development of Uniform Standards

In developing electronic reporting standards, the ERS Workgroup will seriously consider the approach represented by the ANSI X.12 standards, although we will want to examine other models as well. Correspondingly, we are interested in knowing whether data standards other than the ANSI X.12 are being used to implement EDI or other forms of electronic reporting and we would welcome information on such standards.

In developing uniform, Agency-wide standards, the ERS Workgroup will want, to the extent possible, to build on current electronic reporting initiatives already underway in EPA program offices—for example, the electronic reporting under Section 313 of the Emergency Planning and Community Right-to-Know Act (Title III of the Superfund Amendments and Reauthorization Act of 1986). We would likewise want to build on electronic reporting efforts within the regulated community—as well as within State and local government—particularly where the data being transmitted is of the same kinds that would be submitted to EPA. We therefore solicit any available information on such activities.

Given the goal of setting uniform standards for use across the Agency, we are not certain at this time how specific the standards should be to particular data elements. Therefore, the ERS Workgroup will most likely consider both specific as well as generic data standards. While the distinction is somewhat relative and pragmatic, for our purposes a "specific standard" pertains to a particular data element and defines such things as maximum length; whether the data can be characters, numbers, or both; left or right justification within fields; leading or trailing blanks or zeros; and so on. A "generic standard", on the other hand, prescribes the structure and location of a data "module", i.e., a group of functionally related data elements. A generic standard might include instructions on how the module will be labelled; what mandatory and optional data elements the component will consist of; as well as how the data elements in the module will be sequenced, labelled, and separated from each other. The appendix to this notice provides two examples to illustrate these concepts. These examples are solely for purposes of illustration and may not reflect the approach that the ERS Workgroup will eventually take. In any event, we are interested in public comments on the relative importance of generic and specific standards—as we have explained these concepts—to the effort of moving the Agency toward electronic reporting.

The ERS Workgroup will identify and evaluate electronic reporting standards now in use in Agency program offices and elsewhere in the private and public sectors. On the basis of that evaluation, together with the comments and

information received from the public, the Workgroup will decide whether to proceed with the development of such standards for the Agency. If the decision is to proceed, the ERS Workgroup will propose a set of standards for Agency-wide adoption—at least for those data elements or modules of interest to more than one EPA program office. We intend to publish these proposed standards in the **Federal Register** for public review and comment. Following the Workgroup's evaluation of the public comments on the proposed standards, we will develop the final standards. Upon completion, we will publish these standards in the **Federal Register**.

Public Participation

In the foregoing discussion, we have suggested a number of questions for public comment. To summarize them in a list, they are:

(1) Will the "ANSI X.12 Data Interchange Standards" serve as a good model for EPA electronic reporting standards?

(2) Are there any electronic reporting standards other than the ANSI X.12 standards that are widely and successfully used? If you know of such standards, please give us as much information as you can about them and how they compare to the ANSI standards.

(3) What experience have State and local governments had with electronic reporting? What lessons are there for EPA in the State/local experience?

(4) Are there specific electronic reporting activities within the community of organizations that provide data to EPA—the private sector companies, the State and local government agencies, etc.—that we should take account of as we set electronic reporting standards? Please give us as much information as you can about such activities and explain how they may be applicable to EPA.

(5) Are the four requirements discussed in the section entitled "Requirements for Electronic Reporting Standards" sufficient and appropriate? Is it possible to develop standards that will satisfy them?

(6) Do we need to develop generic standards, specific standards, or both (given our concepts of "generic" and "specific")? For what kinds of data would each type of standard be most appropriate?

(7) What kind of certification method(s) can be used in electronic reporting whereby the submitter can "certify" that the information submitted is true and represents the complete response required by EPA?

(8) What problems or issues will EPA have to address in using electronically reported data as evidence in administrative and judicial civil and criminal enforcement actions?

(9) What problems/issues are there in providing for the security of electronically reported data? Can confidential business information (CBI) be submitted electronically? If so, how can the security of CBI be assured?

(10) In general, how should the Agency work with the private sector in setting and implementing electronic reporting standards? What should be the proper role of the regulated community and of the information service industry? What incentives, if any, can EPA offer to the regulated community to promote the use of these standards for electronic reporting?

(11) Similarly, how should EPA work with the State and local governments, and with public interest groups, in setting and implementing electronic reporting standards?

(12) What would be the most efficient and cost-effective way for the Agency to make our electronic reporting standards available to the public? How should the Agency keep the public informed of changes and updates to the standards?

(13) How would electronic reporting affect small business? What, if anything, can EPA do to assist small business in instituting electronic reporting to the Agency?

(14) What implications could the move from paper to electronic or magnetic submissions have for public access to the submitted data? How would or should this affect EPA's responses to Freedom of Information Act (FOIA) requests?

If you wish to respond to one or more of these questions, please follow the procedures specified in the section of this notice entitled "ADDRESSES", and please label your response to indicate the numbers of the question(s) to which it pertains. If you are submitting information on additional electronic data standards, please provide as much background information as you can, to help us evaluate the usefulness of these standards for our purposes. We also welcome your suggestions of other issues to be considered, and any general comments you may have on the benefits or costs of electronic reporting, and on the utility of setting standards for electronic reporting.

Although the ERs workgroup does not plan to hold public meetings, appropriate Agency staff members will be available to meet informally with anyone who requests a face-to-face discussion of comments/suggestions. The meetings would be held at EPA Headquarters in Washington, DC, at a time mutually convenient for you and Agency staff. If you wish to meet with Agency staff, submit a request in writing during the comment period, indicating three alternative days as well as the topic(s) that you want to discuss. We will respond directly to your request within 45 days after the close of the comment period. You may also use the same procedure to request discussions or meetings via telephone.

We believe that the success of this effort depends on a meaningful public dialogue at the earliest possible stage. We therefore urge all interested parties to submit comments and/or suggestions in response to this notice.

Thomas E. Kelly,

Director, Office of Standards and Regulations.

Appendix

Example 1: Generic Standards for Identifying a Facility

Data Element Markers	
FH	Facility Information Header.
F1	Facility Name.
F2	Street address.
F3	City name.
F4	State code.
F5	Zip code.
F6	Facility ID number.
F7	Optional ID number 1.
...	
...	
...	
F16	Optional ID number 10.
F17	Technical contact.
F18	Telephone number.
...	
...	
...	
FE	Facility information trailer.

Structure

Order—The data elements will occur in the order of the markers listed above, each data element directly preceded by its corresponding marker.

Delimiters—The markers-data element pairs will be separated by the "$" sign. The markers will be separated from its data element by a comma. (The structure of a facility name and address sequence following these instructions would be something like: "F1,Acme-Earwig$F2,34-Park Road$F3,Sleepy Hollow$F4,NY$F5,21111".)

Position—Where present, the facility identification component directly precedes facility-specific information pertaining to the facility being identified. Where present, the sequence of facility identification/facility specification components is the first unit of the report.

Example 2: Standards for Specific Data Elements that Identify a Facility

Facility Name—The most common name characterizing the location or the owner of the entity.

Maximum length=50
Record type=Alphanumeric
Format specification=Left justified.

Street Address—The actual street address of the facility, which may or may not correspond to the mailing address.

Maximum length=50
Record type=Alphanumeric
Format specification=Left justified.
Enter "NA" for those entities that do not have a street address.

City Name—The full name of the city in which the facility is located.

Maximum length=25
Record type=Alpha
Format specification=Left justified.
Enter "NA" if appropriate.

State Code—The Federal Information Processing System (FIPS) standard 2-letter code for the state or U.S. territory in which the facility is located.

Maximum length=2
Record type=Alpha
Format specification=Left justified.

Zip Code—The postal Zone Improvement Plan (ZIP) code of the location of the facility. Either 5- or 9-digit codes can be used.

Maximum length=9
Record type=Numeric
Format specification=Right justified with no leading zeroes.

Facility ID Number—The 12-digit code that EPA has assigned to the facility.

Maximum length=12
Record type=Numeric
Format specification=Right justified. Do not use dashes or other special characters.

Optional ID Number 1—Optional ID Number 10

Additional codes specified at option of particular program office.
Specification includes: Maximum length, record type, and format.

Technical Contact—The name of a person who can answer technical questions concerning the submission.

Maximum length=30
Record type=Alphanumeric
Format specification=Left justified.

Telephone Number—The telephone number of the technical contact person with area code.

Maximum length=9
Record type=Numeric
Format specification=Right justified. Do not include parentheses or dashes.

[FR Doc. 89-9121 Filed 4-14-89; 8:45 am]
BILLING CODE 6560-50-M

[OPP-00276; FRL-3556-7]

FIFRA Scientific Advisory Panel; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a 1-day meeting of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel (SAP) to review a set of scientific issues being considered by the Agency in connection with an Acute Dietary Exposure to Aldicarb: A Prototype Analysis; a set of scientific issues being considered by the Agency in connection with the peer review classifications of the pesticides Express as a Class C oncogen and permethrin as a Class C oncogen.

DATE: The meeting will be held on Tuesday, May 9, 1989 from 8:30 a.m. to 4:00 p.m.

ADDRESS: The meeting will be held at: Crystal City Hyatt Regency Hotel, 2799 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: By Mail: Robert B. Jaeger, Executive Secretary, FIFRA Scientific Advisory Panel, Office of Pesticide Programs (H7509C), 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 821, Crystal Mall Building No. 2, Arlington, VA, (703-557-4369).

SUPPLEMENTARY INFORMATION: The agenda for the meeting is:

1. Review of a set of scientific issues in connection with the Agency's draft proposal for Acute Dietary Exposure to Aldicarb: A Prototype Analysis. The Agency is proposing to use this alternative method in evaluating risk to acutely toxic pesticides when the standard Tolerance Assessment System acute exposure analyses indicate a more refined analysis is justified.

2. Review of a set of scientific issues in connection with the Agency's classification of Express as a Class C oncogen based on significant increase in mammary gland adenocarcinomas found in female Sprague-Dawley rats.

3. Review of a set of scientific issues in connection with the Agency's classification of permethrin was based on the weight of evidence in one species (mouse) and equivocal evidence in the second species (Long-Evens rat) which was considered to be suggestive.

4. In addition, the Agency may present status reports on other ongoing programs of the Office of Pesticide Programs.

Copies of documents relating to items 1-3 may be obtained by contacting: By mail: Information Services Branch, Program Management and Support Division (H7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 240, Crystal Mall Building No. 2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-2805).

Any member of the public wishing to submit written comments should contact Robert B. Jaeger at the address or telephone number given above to be sure that the meeting is still scheduled and to confirm the Panel's agenda. Interested persons are permitted to file such statements before the meeting. To the extent that time permits and upon advance notice to the Executive Secretary, interested persons may be permitted by the chairman of the Scientific Advisory Panel to present oral statements at the meeting. There is no limit on written comments for consideration by the Panel, but oral statements before the Panel are limited to approximately 5 minutes. Since oral statements will be permitted only as time permits, the Agency urges the public to submit written comments in lieu of oral presentations. Information submitted as a comment in response to this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public docket. Information not marked confidential will be included in the public docket without prior notice. The public docket will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. All statements will be made part of the record and will be taken into consideration by the Panel. Persons wishing to make oral and/or written statements should notify the Executive Secretary and submit ten copies of a summary no later than April 26, 1989, in order to ensure appropriate consideration by the Panel.

Dated: April 11, 1989.

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 89-9162 Filed 4-14-89; 8:45 am]

BILLING CODE 6560-50-M

[OPP 30297; FRL-3556-4]

Receipt of Notification of Intent To Conduct Small-Scale Field Testing; Genetically Altered Microbial Pesticide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received from the Eastman Kodak Co. a notification of intent to conduct small-scale field testing of strain KRL-AG2 of *Trichoderma harzianum* derived from auxotrophic mutants of two *T. harzianum* strains from the Eastman Kodak Co.

ADDRESS: By mail, submit written comments to: Public Docket and Freedom of Information Section, Field Operations Division (H-7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person bring comments to: Rm. 246, CM#2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted and any comment(s) concerning this Notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment(s) that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Information on the proposed test and any written comments will be available for public inspection in Rm. 246 at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Susan T. Lewis, Acting Product Manager (PM) 21, Registration Division (H-7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 227, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 557-1900.

SUPPLEMENTARY INFORMATION: A notification of intent to conduct small-scale field testing pursuant to the EPA's "Statement of Policy; Microbial Products Subject to the Federal Insecticide, Fungicide, and Rodenticide Act and the Toxic Substances Control Act" of June 26, 1986 (51 FR 23313), has been received from the Eastman Kodak Co. of Rochester, New York. The purpose of the proposed testing is to evaluate the efficacy of the *Trichoderma harzianum* strain against fungal pathogens of cotton and 12 other vegetable and field crops. The proposed field tests include 38 test plots located in 18 States. Each plot will be less than 0.1 acre.

Dated: April 7, 1989.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 89-9118 Filed 4-14-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

April 10, 1989.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on this information collection should contact Eyvette Flynn, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395-3785.

OMB Number: 3060-0128.

Title: Applicaiton for Private Land Mobile and General Mobile Radio Services.

Form Number: FCC 574.

Action: Revision.

Respondents: Individuals or households, state or local governments, non-profit institutions, and businesses (including small businesses).

Frequency of Response: On occasion.

Estimated Annual Burden: 142,294 Responses; 569,176 Hours.

Needs and Uses: The FCC 574 is filed by applicants in the Private Land Mobile and General Mobile Radio Services to request an authorization or to modify an existing one. The data is used to determine eligibility, for rulemaking proceedings, enforcement purposes, and for use in resolving treaty obligations. The data is vital to maintain an acceptable data base and for issuing authorizations.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89-9017 Filed 4-14-89; 8:45 am]

BILLING CODE 6712-01-M

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

April 10, 1989.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on this information collection should contact Eyvette Flynn, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395-3785.

OMB Number: 3060-0022.

Title: Application of Alien Amateur Radio Licensee for Permit to Operate in the United States.

Form Number: FCC 610-A.

Action: Extension.

Respondents: Individuals or households.

Frequency of Response: On occasion.

Estimated Annual Burden: 2,000 Responses; 166 Hours.

Needs and Uses: The FCC 610-A must be filed with the Commission by aliens who hold an amateur operator and station license issued by his/her government and who wish to apply for a permit to operate an amateur radio station in the United States. FCC staff will use the data to determine eligibility for radio station authorization and to issue a radio station/operator permit.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89-9018 Filed 4-14-89; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

[Circular Letter No. 1-89]

Ocean Common Carriers, Conferences of Such Carriers, Shippers, and Shippers' Associations in the Foreign Commerce of the United States; Service and Cargo Commitments in Service Contracts

Section 8(c) of the Shipping Act of 1984 ("1984 Act"), 46 U.S.C. App. 1707(c), requires service contracts between shippers or shippers' associations and ocean common carriers or conferences to meet certain statutory requirements and to be filed with the Federal Maritime Commission. Section 3(21) of the 1984 Act, 46 U.S.C. App. 1702(21), defines a "service contract" as:

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

The Commission has received service contracts which do not appear to contain mutually binding commitments by the contract parties sufficient to meet the definition of "service contract" contained in the 1984 Act.

In addressing the matter of service contract commitments, generally, the Commission noted in Docket No. 88-7, *Service Contracts—Most-Favored-Shipper Provisions* ("Docket No. 88-7") that:

> Meaningful minimum quantities of cargo over a fixed time period and rate and defined service level commitments between a carrier and a shipper are the legislative *quid pro quo* for departing from the published tariff rates of the carrier that would otherwise apply. The failure of the contract parties to fulfill the basic requirements of this *quid pro quo* not only offends the legislative scheme crafted by Congress but also could, as noted above, make the service contract but a device to evade the carrier's tariff rates in violation of section 10(a)(1) of the 1984 Act. We believe that the Commission is not only empowered but also * * * has the responsibility to take whatever regulatory action may be necessary and appropriate to ensure against this result.
>
> Accordingly, it is the stated policy of the Commission to require meaningful rate and volume commitments on the part of the shipper and meaningful service commitments on the part of the carrier in all service contracts entered into under the authority of section 8(c) of the 1984 Act. The Commission will scrutinize contracts carefully at the time of filing to ensure that they contain such commitments, pursuant to the requirements of 46 CFR 581.1(n). Failure to comply with the requirements of 46 CFR 581.1(n), as herein interpreted, will result in the rejection of the contract pursuant to 46 CFR 581.8 or other appropriate Commission action.

Docket No. 88-7, Proposed Rule, slip op. at 31, 32

In essence, service contracts must, by statute, contain certain definite commitments by both the carrier and the shipper. Moreover, these commitments must be meaningful, *i.e.*, the contract parties must undertake real obligations. Service contracts that are indefinite or contain illusory undertakings simply do not meet the definition of "service contract" under the 1984 Act. A service contract that lacks definite and mutual consideration not only fails to meet the statutory definition but may also be invalid and unenforceable at common law.

With respect to carrier or conference commitments in a service contract, the Commission believes that contract provisions that provide for "regular" or "frequent" service do not meet the 1984 Act's requirement that the carrier or conference commit to a "defined service level." Although the Act does not specifically define the term "service level," it does provide several examples (*e.g.*, assured space, transit time, etc.) sufficient to indicate the scope of the concept. A mere recitation of a common carrier's obligation under common law is not adequate.

Moreover, the Commission is aware of some contracts where a carrier agrees in one provision to specific service commitments (such as assured space), but in another provision vitiates that commitment by stating that a shipper's exclusive remedy in the event of a breach of the carrier's commitment is a reduction in the shipper's minimum cargo commitment. Under such an arrangement, the carrier is in effect committing to nothing. Congress expected both parties to a service contract to make mutual, binding commitments and anything less is not acceptable.

Similarly, the Commission believes that a service contract that allows a shipper to default on its cargo commitment while only paying *de minimis* damages to the carrier may not be a *bona fide* contract. For example, some service contracts establishing rate levels of over $2,000 per container provide for liquidated damages of only $40 or $50 per container in the event the shipper fails to meet its minimum cargo commitment. Such damages provisions do not appear to bear a reasonable relationship to the cargo commitment, the contract rate, or the effects of the loss of cargo to the carrier. Service contracts embodying *de minimis* liquidated damages provisions may thus render the shipper's cargo commitment meaningless, and, therefore, result in a contract that fails to meet the statutory definition. The Commission previously noted

> * * * that although it lacks the authority to directly regulate the use of liquidated damages provisions [this] does not necessarily mean that the Commission is without authority to preclude service contract liquidated damages provisions which may permit evasion of the otherwise applicable tariff rate contrary to the 1984 Act and the policies underlying it, regardless of whether both parties to the contract willingly or unwillingly agree to those provisions.

Docket No. 88-7, Proposed Rule, slip op. at 28, 29. In keeping with this admonition, the Commission will closely scrutinize the levels of liquidated damages for breach of the shipper's cargo commitment and will take appropriate action against service contracts containing damages provisions considered *de minimis*.

The Commission recognizes that liquidated damages provisions in service contracts are permissive and not mandatory under the 1984 Act. Nonetheless, when the parties to a service contract choose to agree on liquidated damages for the breach of a shipper's minimum cargo commitment, that amount must bear some reasonable relation to the actual damages that will otherwise be incurred by a carrier and for which the shipper would be liable absent a liquidated damages provision. Liquidated damages provisions should be legitimate and not be used to give a shipper an unfair benefit even though it did not meet its commitment under the contract.

Ocean common carriers, conferences of such carriers, shippers, and shippers' associations are hereby advised that the Commission expects service contracts to conform to the definitional requirements for service contracts under the 1984 Act. Accordingly, the Commission will begin to take action against any contract filed 45 days after the date of this Circular Letter that does not meet statutory requirements.

April 12, 1989.

Edward P. Walsh,

Managing Director.

[FR Doc. 89-9079 Filed 4-11-89; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Change in Bank Control; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 1, 1989.

A. Federal Reserve Bank of Kansas City

(Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Dr. William D. Angle,* Omaha, Nebraska; Repert Dunklau, Fremont, Nebraska; and Thomas J. Milliken, Fremont, Nebraska; to acquire an additional 28.51 percent of the voting shares of Pathfinder Bancshares, Inc., Fremont, Nebraska, by becoming co-trustees of a voting trust that will control, along with shares held by these individuals, a total of 68.68 percent, and thereby indirectly acquire Fremont National Bank and Trust Co., Fremont, Nebraska.

B. Federal Reserve Bank of Dallas

(W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Arthur Temple,* Diboll, Texas; to acquire an additional 8.01 percent of the voting shares of Pineland Bancshares, Inc., Pineland, Texas, for a total of 26.7 percent, and thereby indirectly acquire Pineland State Bank, Pineland, Texas.

C. Federal Reserve Bank of San Francisco

(Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *North County Bank Employee Stock Ownership Trust,* Escondido, California; to acquire an additional 9.4 percent of the voting shares of North County Bancorp, Escondido, California, for a total of 16.2 percent, and thereby indirectly acquire North County Bank, Escondido, California.

Board of Governors of the Federal Reserve System, April 11, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-9083 Filed 4-14-89; 8:45 am]

BILLING CODE 6210-01-M

Bancpal, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically and questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than May 5, 1989.

A. Federal Reserve Bank of Chicago

(David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Bancpal, Inc.,* Palatine, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Palatine, Palatine, Illinois.

B. Federal Reserve Bank of St. Louis

(Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *HNB Bancorp, Inc.,* Hannibal, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of the Hannibal National Bank, Hannibal, Missouri, which engages in the sale, as agent, of credit-related insurance sold in connection with extensions of credit made by the target bank.

C. Federal Reserve Bank of Minneapolis

(James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Belle Fourche Bancshares, Inc.,* Belle Fourche, South Dakota; to merge with Buffalo Bancorporation, Inc., Buffalo, South Dakota, and thereby indirectly acquire First State Bank, Buffalo, South Dakota.

D. Federal Reserve Bank of Kansas City

(Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Alpine Bank of Colorado,* Glenwood Springs, Colorado; to acquire 100 percent of the voting shares of Alpine Bank, Aspen, Aspen, Colorado.

Board of Governors of the Federal Reserve System, April 11, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-9084 Filed 4-14-89; 8:45 am]

BILLING CODE 6210-01-M

Grand Bank Financial Corp., et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo,* either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition,

conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 4, 1989.

A. Federal Reserve Bank of Chicago

(David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Grand Bank Financial Corporation*, Grand Rapids, Michigan; to engage *de novo* through its subsidiary, Grand Financial Associates, Inc., Grand Rapids, Michigan, arranging mortgages and other extensions of credit for prospective borrowers with unaffiliated institutional lenders in exchange for a service fee pursuant to § 225.25(b)(1) of the Board's Regulation Y.

B. Federal Reserve Bank of St. Louis

(Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Farmers Capital Bank Corporation*, Frankfort, Kentucky; to engage *de novo* through its subsidiary, Money One Credit Corporation, Frankfort, Kentucky, in the consumer finance business pursuant to § 225.25(b)(1); and in the sale of insurance, as agent, directly related to its lending activities pursuant to §§ 225.25(b)(8)(i) and (b)(8)(ii) of the Board's Regulation Y. These activities will be conducted in the State of Kentucky. Comments on this application must be received by May 1, 1989.

Board of Governors of the Federal Reserve System, April 11, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-9085 Filed 4-14-89; 8:45 am]

BILLING CODE 6210-01-M

Norwest Corp.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under § 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 5, 1989.

A. Federal Reserve Bank of Minneapolis

(James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Norwest Corporation*, Minneapolis, Minnesota, and two of its subsidiaries, Norwest Financial Services, Inc., Des Moines, Iowa, and Norwest Financial, Inc., Des Moines, Iowa; to acquire substantially all of the assets and substantially all of the liabilities to unrelated parties of Financial Investment Associates, Incorporated, Northfield, Illinois, and thereby engage in leasing personal property or acting as agent, broker or advisor in leasing personal property pursuant to § 225.25(b)(5); and making acquiring or servicing loans or other extensions of credit such as would be made by a commercial finance company pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, April 11, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-9086 Filed 4-14-89; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Privacy Act of 1974; Matching Program—Federal Personnel/Child Support Enforcement Records

AGENCY: Department of Health and Human Services (HHS).

ACTION: Notification of Matching Program—Federal Personnel/Child Support Enforcement Records.

SUMMARY: The Department of Health and Human Services is providing notice that the Office of Inspector General (OIG) intends to conduct a match of Federal personnel records against Office of Child Support Enforcement tax intercept records. A matching report is set forth below:

DATE: The match will begin in April 1989.

ADDRESS: Send all comments to the Financial and Administrative Management Staff, Administrative Office, OIG, HHS Room 5246 Cohen Building, 330 Independence Avenue, SW., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Diane Datcher, Financial and Administrative Management Staff, Administrative Office, OIG, HHS, Room 5246 Cohen Building, 330 Independence Avenue, SW., Washington, DC 20201.

SUPPLEMENTARY INFORMATION: The HHS OIG, in cooperation with the Office of Personnel Management, the Department of Defense and the United States Postal Service, has initiated a project to identify and locate absent parents in arrears on child support who are employed by the Federal Government. This is a follow-up matching project being conducted because of the results of a smaller 1988 match of child support enforcement records and HHS personnel records which the OIG has determined will lead to additional Federal wage withholdings of approximately $88,000 a year for child support payments. Based on these figures and a recent statistical match of Federal personnel records with 1988 child support enforcement records, the OIG estimates that this project could lead to potential additional Federal wage withholdings of approximately $20 million a year for child support

payments. Set forth below is the information required by paragrah 5.f.1 of the Revised Supplemental Guidance for Conducting Computerized Matching Programs issued by the Office of Management and Budget, 47 FR 21656 (May 19, 1982). A copy of this notice has been furnished to both Houses of Congress and the Office of Management and Budget.

Date: April 10, 1989.

Richard P. Kusserow,

Inspector General.

Report of Matching Program: Federal Personnel/Child Support Enforcement Records

a. *Authority:* Pub. L. 94–505

B. *Program Description:* The Federal Government has played a very active role in assuring adequate child support for minor children. As a major employer, it also has a responsibility to identify and take action with regard to its own employees who are delinquent in making child support payments. The goals of this match are to reduce the amount of support payments in arrears, to initiate regular wage withholding of support payments, and to determine the potential for medical support. The match will compare Office of Child Support records of delinquent absent parents with Federal personnel records of the Office of Personnel Management, Department of Defense, and the United States Postal Service. In order to protect the individuals identified as raw hits, the data will be evaluated and then screened to assure that only valid hits are provided to the States for any action. This process will involve: (1) Verification of the initial hits by checking whether name, date of birth, and Social Security number match, (2) determining if the employing agency has a wage withholding order for the individual and if it is in place, and (3) checking the individual current address and employment status. Once these steps are taken, the data will be provided to the Department of Health and Human Services Office of Child Support Enforcement for further screening and review to determine whether the State has subsequently deleted the individuals from its arrearage listing and whether the arrearage has been offset by the Internal Revenue Service, who will be asked to provide information on any actions taken.

c. *Records to be Matched:* Records of the Child Support Enforcement Agency from the Federal Parent Locator Service and Federal Tax Offset System 52 FR 29732 (August 11, 1987) will be matched against the following Federal personnel records systems:

1. Office of Personnel Management—General Personnel Records system 49 FR 36954 (September 20, 1984) and Civil Service Retirement and Insurance Records system, 49 FR 36950 (September 20, 1984).

2. Department of Defense—Defense Manpower Data Center Base system, 53 FR 44937 (November 7, 1988).

3. United States Postal Service—Financial Records-Payroll system, 52 FR 6251 (March 2, 1987).

d. *Period of the Match:* This project will begin in April 1989. The matching screening and referral of cases will be completed during 1989.

e. *Safeguards:* Records used in this match will be maintained under strict security. Access to the computer files and printed information will be restricted to only those persons having a "need to know" for the purposes of additional review or resolution. The records being matched will be kept in locked file cabinets under control of the Office of Inspector General, or in secured Government computer facilities. We will return all of the Federal personnel computer source tapes to the agencies upon completion of the match. Computer tapes are protected by the use of passwords to prohibit unauthorized access. All computer files are safeguarded in accordance with the provisions of the National Bureau of Standards Federal Information Processing Standards 41 and HHS ADP Systems Security Manual, Part 6, "ADP Systems Security."

f. *Retention and Disposition of Records:* In instances of computer matching of files, only those records which meet predetermined criteria are maintained. All records which do not meet these criteria are destroyed. All original source computer tapes will be returned within 60 days.

All records obtained as a result of the matching program will be degaussed as soon as possible within 6 months except for those records which are necessary to the completion of pending child support enforcement actions resulting from the matching program. Paper listings will be either shredded or burned.

[FR Doc. 89–9098 Filed 4–14–89; 8:45 am]

BILLING CODE 4150–04–M

Alcohol, Drug Abuse, and Mental Health Administration

Advisory Committee Meetings

AGENCY: Alcohol, Drug Abuse and Mental Health Administration.

ACTION: Notice of meetings.

SUMMARY: This notice sets forth the schedule and proposed agendas of the forthcoming meetings of the agency's advisory committees in the month of May 1989. The initial review committees and the National Advisory Councils will be performing review of applications for Federal assistance, and the Board of Scientific Counselors will review and evaluate intramural projects and individual staff scientists. Therefore, portions of the meetings will be closed to the public as determined by the Administrator, ADAMHA, in accordance with 5 U.S.C. 552(b)(6) and 5 U.S.C. app. 2 10(d). Notice of these meetings is required under the Federal Advisory Committee Act, Pub. L. 92–463.

Committee Name: Mental Health AIDS Research Review Committee, NIMH

Date and Time: May 4–5: 8:30 a.m.

Place: Conference Room B, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857

Status of Meeting: Open—May 4: 8:30–9:00 a.m. Closed—Otherwise

Contact: Irma Fisher, Room 9C–15, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–6470

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of activities in the fields of research and research training in the areas of psychoneuroimmunological, psychosocial, behavioral, and psychological aspects of AIDS as they relate to mental health, with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Board of Scientific Counselors, NIDA

Date and Time: May 17–19: 9:30 a.m.

Place: Addiction Research Center Conference Room, 4940 Eastern Avenue, Building D5 East, Baltimore, MD 21224

Status of Meeting: Open—May 17: 9:30–10:00 a.m. Closed—Otherwise

Contact: Mary Phelps, Addiction Research Center, P.O. Box 5180, Baltimore, MD 21224, (301) 550–1490

Purpose: The Board provides expert advice to the Director, NIDA, on the drug abuse intramural research program through periodic visits to the laboratories for assessment of the research in progress and evaluation of productivity and performance of staff scientists.

Committee Name: National Advisory Mental Health Council, NIMH

Date and Time: May 22–23: 9:00 a.m.

Place: May 22: Parklawn Building, Conference Room G & H, 5600 Fishers Lane, Rockville, MD 20857; May 23: Building 31C, NIH Campus, Conference Room #10, 9000 Rockville Pike, Bethesda, MD 20892

Status of Meeting: Open—May 23: 9:00 a.m.–5:00 p.m. Closed—Otherwise

Contact: Dee Herman, Parklawn Building, Room 9–105, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–3367

Purpose: The Council advises the Secretary of Health and Human Services, the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, and the Director, National Institute of Mental Health regarding policies and programs of the Department in the field of mental health. The Council reviews applications for grants-in-aid relating to research and training in the field of mental health and makes recommendations to the Secretary with respect to approval of applications for, and amount of, these grants.

Committee Name: Psychopathology Subcommittee of the Psychopathology and Clinical Biology Research Review Committee, NIMH

Date and Time: May 24–26: 9:00 a.m.

Place: Days Inn, 1775 Rockville Pike, Rockville, MD 20852

Status of Meeting: Open—May 24: 9:00–10:00 a.m. Closed—Otherwise

Contact: Emilie A. Embrey, Room 9C–08, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–1340

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of activities in the fields of research and research training in the areas of clinical psychopathology and clinical biology as they relate to mental health, with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: National Advisory Council on Drug Abuse, NIDA

Date and Time: May 31–June 1: 9:00 a.m.

Place: NIH Campus, Building 31C, Conference Room 9, 9000 Rockville Pike, Bethesda, MD 20892

Status of Meeting: Open—May 31: 9:00–5:00 p.m. June 1: 1:00 p.m.–4:00 p.m. Closed—Otherwise

Contact: Sheila H. Gardner, Room 8A–54, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–0441

Purpose: The Council advises and makes recommendations to the Secretary, Department of Health and Human Services, the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, and the Director, National Institute on Drug Abuse on the development of new initiatives and priorities and the efficient administration of drug abuse research, including prevention and treatment research, and research training. The Council also gives advice on policies and priorities for drug abuse grants and contracts, and reviews and makes final recommendations on grant applications.

Substantive information, summaries of meetings, and rosters of committee members may be obtained as follows: Ms. Camilla Holland, NIDA Committee Management Officer, Room 10–42, (301) 443–2620; Ms. Joanna Kieffer, NIMH Committee Management Officer, Room 9–105, (301) 443–4333. The mailing address for both parties is: Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

Date: April 11, 1989.

Peggy W. Cockrill,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 89–9075 Filed 4–14–89; 8:45 am]

BILLING CODE 4160–20–M

Centers for Disease Control

Vital and Health Statistics National Committee; Meeting

ACTION: Notice of meeting.

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that the National Committee on Vital and Health Statistics (NCVHS) Executive Subcommittee established pursuant to 42 USC 242k, section 306(k)(2) of the Public Health Service Act, as amended, announces the following meeting.

Name: National Committee on Vital and Health Statistics Executive Subcommittee.

Time and Date: 8:00 a.m.–4:00 p.m.—May 2, 1989.

Place: 2011 I Street, NW., Suite 200, Washington, DC 20006.

Status: Open.

Purpose: The purpose of this meeting is for the Subcommittee to review activities and work plans of the full Committee and other subcommittees and to make plans for the June 7–9, 1989, NCVHS meeting.

Contact Person for More Information: Substantive program information as well as summaries of the meeting and roster of Committee members may be obtained from Gail F. Fisher, Ph.D., Executive Secretary, National Committee on Vital and Health Statistics, Room 2–12, Center Building, 3700 East West Highway, Hyattsville, Maryland 20782, telephone (301) 436–7050.

Dated: April 11, 1989.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 89–9080 Filed 4–14–89; 8:45 am]

BILLING CODE 4160–18–M

Vital and Health Statistics National Committee; Meeting

ACTION: Notice of meeting.

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that the National Committee on Vital and Health Statistics (NCVHS) Subcommittee on Ambulatory Care Statistics established pursuant to 42 USC 242k, section 306(k)(2) of the Public Health Service Act, as amended, announces the following meeting.

Name: National Committee on Vital and Health Statistics Subcommittee on Ambulatory Care Statistics.

Time and Date: 9:00 a.m.–5:00 p.m.—May 2, 1989.

Place: Hubert H. Humphrey Building, Room 337A–339A, 200 Indpendence Avenue, SW., Washington, DC 20201.

Status: Open.

Purpose: The NCVHS Subcomittee on Ambulatory Care Statistics and the DHHS Interagency Task Force on Uniform Ambulatory Care Data Set will hold a joint working session to discuss their common report on the data set.

Contact Person for More Information: Substantive program information as well as summaries of the meeting and roster of Committee members may be obtained from Gail F. Fisher, Ph.D., Executive Secretary, National Committee on Vital and Health Statistics, Room 2–12, Center Building, 3700 East West Highway, Hyattsville, Maryland 20782, telephone (301) 436–7050.

Dated: April 11, 1989.

Elvin Hilyer,

Associate Director for Policy Coordination Centers for Disease Control.

[FR Doc. 89–9081 Filed 4–14–89; 8:45 am]

BILLING CODE 4160–18–M

Diabetes Translation and Community Control Programs Technical Advisory Committee; Meeting

ACTION: Notice of meeting.

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease

Control (CDC) announces the following Committee meeting.

Name: Technical Advisory Committee for Diabetes Translation and Community Control Programs.

Time and Date: 9 a.m.–5 p.m., Tuesday, May 2, 1989; 8:30 a.m.–12 Noon, Wednesday, May 3, 1989.

Place: Ritz-Carlton Hotel, 181 Peachtree Street, NE, Atlanta, Georgia 30303.

Status: Open to the public, limited only by the space available.

Purpose: This Committee is charged with advising the Director, CDC, regarding priorities and feasible goals for translation activities and community control programs designed to reduce morbidity and mortality from diabetes and its complications. The Committee advises regarding policies, strategies, goals and objectives, and priorities; identifies research advances and technologies ready for translation into widespread community practice; recommends public health strategies to be implemented through commuity interventions; advises on operational research and outcome evaluation methodologies; identifies research issues for further clinical investigation; and advises regarding the coordination of programs with Federal, voluntary, and private resources involved in the provision of services to people with diabetes.

Matters to be discussed: The Committee will discuss its purpose and goals at length, map out its agenda for the next 12 to 15 months, and set dates for its next four or five meetings. The Committee will review recommendations and suggestions submitted to CDC by individual expert consultants regarding the scientific priorities for diabetes translation. Current activities by the Division of Diabetes Translation (DDT) and the Center for Chronic Disease Prevention and Health Promotion (CCDPHP) will also be discussed.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Robert D. Moran, Public Health Advisor, DDT, CCDPHP, CDC, 1600 Clifton Road, NE, Mailstop E08, Atlanta, Georgia 30333, telephones—FTS 236–1855, Commercial 404/639–1855.

Dated: April 11, 1989.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 89–9082 Filed 4–14–89; 8:45 am]

BILLING CODE 4160–18–M

Food and Drug Administration

[Docket No. 89M–0057]

Organon Teknika Corp.; Premarket Approval of Hepanostika® Anti-Hav Microelisa System

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Organon Teknika Corp., Durham, NC, for premarket approval, under the Medical Device Amendments of 1976, of the Hepanostika® Anti-HAV Microelisa System. The device is an enzyme-linked immunosorbent assay (ELISA) intended for the qualitative determination of total antibody to hepatitis A virus (HAV) in human serum or plasma and is indicated as an aid in determining immune status. After reviewing the recommendation of the Microbiology Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of February 6, 1989, of the approval of the application.

DATE: Petitions for administrative review by May 17, 1989.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Joseph L. Hackett, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7550.

SUPPLEMENTARY INFORMATION: On April 5, 1983, Organon Teknika Corp., Durham, NC 27704–0969, submitted on CDRH an application for premarket approval of the Hepanostika® Anti-HAV Microelisa System. The device is an enzyme-linked immunosorbent assay (ELISA) intended for the qualitative determination of total antibody to hepatitis A virus (HAV) in human serum or plasma and is indicated as an aid in determining immune status.

On December 8 and 9, 1983, the Microbiology Devices Panel, and FDA advisory committee, reviewed and recommended approval of the application. On February 6, 1989, CDRH approved the application by a letter to the applicant from the Acting Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Joseph L. Hackett (HFZ–440), address above.

Opportunity for Administration Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before May 17, 1989, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: April 7, 1989.

Walter E. Gundaker,

Acting Deputy Director Center for Devices and Radiological Health.

[FR Doc. 89-9077 Filed 4-14-89; 8:45 am]

BILLING CODE 4160-01-M

Public Workshop; Regulation of Hematopoietic Growth Factors

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) and the National Cancer Institute, the National Institute of Allergy and Infectious Diseases, and the National Heart, Lung, and Blood Institute are announcing a forthcoming public workshop to discuss the regulatory issues regarding the approval of hematopoietic growth factors.

DATES: The public workshop will be held from 8:30 a.m. to 6 p.m., May 8, 1989, and from 8:30 a.m. to 4 p.m., May 9, 1989, at the Guest Quarters Hotel, 7335 Wisconsin Ave., Bethesda, MD 20814.

FOR FURTHER INFORMATION CONTACT: Gretchen Hascall, Advisors and Consultants Staff (HFD-9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4695.

SUPPLEMENTARY INFORMATION: On May 8 and 9, 1989, the Center for Biologics Evaluation and Research, FDA, in conjunction with the Biological Response Modifiers Program of the National Cancer Institute, the National Institute for Allergy and Infectious Diseases, and the National Heart, Lung, and Blood Institute, will sponsor a workshop to discuss regulatory issues regarding the approval of hematopoietic growth factors (G-CSF, GM-CSF, M-CSF, IL-3, and IL-1). These factors have become increasingly important in clinical use, and it would be of benefit to manufacturers, clinicians, and regulatory agencies to discuss ways to facilitate the regulatory review process for the testing and licensing of these products.

Topics to be discussed in the workshop will include efficacy in a variety of diseases, toxicities, and preclinical testing.

Persons wishing to obtain a copy of the tentative agenda and preregistration packet for the workshop may notify the contact person listed above. Persons planning to attend the workshop should notify the contact person as soon as possible because space is limited.

Dated: April 11, 1989.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89-9076 Filed 4-14-89; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

Privacy Act of 1974; System of Records; Correction

AGENCY: Department of Health and Human Services (HHS), Health Care Financing Administration (HCFA).

ACTION: Correction notice.

SUMMARY: HCFA is enhancing two of the routine use provisions included in the notice of system of records for the Medicare Bill File (Statistics) system, No. 09-70-0005. On Friday, March 31, 1989, a notice of this proposal was published in the **Federal Register** (54 FR 13237). Appendix A, referred to in the notice, was inadvertently not published. Therefore, as a convenience to the reader, we are republishing the notice in its entirety below.

EFFECTIVE DATE: This notice is effective on or before April 17, 1989.

FOR FURTHER INFORMATION CONTACT: Glenn J. Martin, Office of Statistics and Data Management, G-D-2 Meadows East Building, 6325 Security Boulevard, Baltimore, Maryland 21207, (301) 966-6110.

SUPPLEMENTARY INFORMATION: The notice for the Medicare Bill File (Statistics) System No. 09-70-0005, was most recently published in the **Federal Register** on December 29, 1988 (53 FR 52792). This system contains records on bills for services furnished to persons enrolled in Part A (hospital insurance) and/or Part B (supplementary medical insurance) of the Medicare program. Data in this system are used primarily for statistical and research purposes related to evaluating the operation and effectiveness of the Medicare program. HCFA has developed a subfile (Expanded modified MEDPAR File) from data in this system to release to entities for statistical analyses bearing on Medicare payment policies for inpatient hospital services and published a routine use provision (5) in the system notice specifying the conditions that must be met in order to obtain the subfile. HCFA has also developed a subfile for quality and effectiveness of care (QC/MEDPAR) research and published a routine use (7) governing the release of this subfile. We are now proposing to enhance these two routine use provisions.

Both routine uses are to be enhanced by making subsets of the files available to qualified requestors. A subset consisting of data for one to five specified States will be available for either subfile as well as a subset of one to five DRGs; one to five ICD codes (three positions); or a standard sample of 5, 10, or 20 percent. Combination of subsets will not be provided.

In addition, the QC/MEDPAR subfile will be enhanced by providing the beneficiary's age rather than age interval, and by adding type of admission, source of admission, and the day of the week of the beneficiary's admission. (See Appendix A.)

These enhancements are being made at the suggestion of potential users of the subfiles to increase their usefulness for payment policy analysis and quality and effectiveness of care research. These changes will not affect beneficiary privacy.

This action does not require a report of altered system under 5 U.S.C. 552a(o).

Date: April 12, 1989.

Louis B. Hays,

Acting Administrator, Health Care Financing Administration.

APPENDIX A.—DATA ELEMENTS CONTAINED IN THE QUALITY OF CARE MEDPAR FILE

Data element	Description	Function
1. HI Claim Number.	Encrypted to protect the identity of the beneficiary.	To determine the number of stays for a beneficiary.
2. Day of Admission.	1—Sunday 2—Monday 3—Tuesday 4—Wednesday 5—Thursday 6—Friday 7—Saturday	To facilitate analysis of admission patterns.
3. Sex	—male —female —unknown	To measure sex-based differences.
4. Medicare Status Code.	Code to show reason for beneficiary's entitlement. —aged without ESRD. —aged with ESRD. —disabled without ESRD. —disabled with ESRD. —ESRD only	To examine effectiveness of care for different categories of Medicare beneficiaries.

APPENDIX A.—DATA ELEMENTS CONTAINED IN THE QUALITY OF CARE MEDPAR FILE—Continued

Data element	Description	Function
5. Discharge Destination.	—To home, self care. —To short-term hospital. —To SNF —To other type facility. —To home health service. —Left against medical advice. —Died —Still a patient	To group stays into Diagnosis Related Groups (DRGs).
6. Medicare Provider Number.	Identification number of hospital.	To allow for review of care on an institution-specific basis.
7. Date of Admission.	Date, plus/minus 1 to 20 days*.	To measure intervals between hospital episodes.
8. Date of Discharge.	Date, plus/minus 1 to 20 days*.	To measure intervals between hospital episodes.
9. Length of Stay.	Number of days in hospital stay.	To examine days of care.
10. Intensive Care and Coronary Care Days.	Days in special care units of hospitals.	To measure outcomes in and use of special care units.
11. Total Charges.	All charge fields (fields 11–21) are in whole dollars.	Charge fields 11–21 are included to measure relative resource use across cases.
12. Routine Accommodation Charges.		
13. Intensive Care and Coronoary Care Charges.		
14. Total Department (Ancillary) Charges.		
15. Operating Room Charges.		
16. Pharmacy Charges.		
17. Laboratory Charges.		
18. Radiology Charges.		
19. Supplies Charges.		
20. Anesthesia Charges.		
21. Inhalation Therapy Charges.		
22. Principal and Other Diagnosis Codes.	Five ICD–9–CM Codes.	Fields 22–23 are included to identify diagnostic/surgical information and to group stays into DRGs.
23. Surgical Codes.	Three ICD–9–CM Volume 3 codes.	
24. Date of Surgery.	Date plus/minus 1 to 20 days*.	To measure intervals between admission/discharge and surgery
25. Blood Furnished.	Number of pints	To measure outcomes.
26. Diagnosis Related Group.	DRG1–DRG475	To define diagnostic groups used in the Prospective Payment System.
27. Date of death.	Date, plus/minus 1 to 20 days*.	To determine mortality rates.
28. Urban/rural residence.	1=urban 2=rural	To examine variations in care in urban and rural areas.
29. Zip-Code	5 digit zip	To examine variations in care in small areas.
30. Special Unit Code.	S—Psychiatric Unit. T—Rehabilitation Unit. U—Swing-bed Hospital. V—Alcohol/Drug Unit Blank.	Distinguishes PPS-exempt unit records.
31. Beneficiary State of Residence.	Two-position SSA numeric code.	To facilitate seasonal migration studies.
32. Source of Admission.	AdmissionType 1, 2, or 3: 1—Physician Referral. 2—Clinic Referral. 3—HMO Referral. 4—Transfer from Hospital. 5—Transfer from SNF. 6—Transfer from Another Health Care Facility. 7—Emergency Room. 8—Court/Law Enforcement. 9—Unknown Admission Type 4: 1—Normal Delivery. 2—Premature Delivery. 3—Sick Baby 4—Extramural 5—Unknown	To allow analysis of admissions and episodes of care.
33. Type of Admission.	1—Emergency 2—Urgent 3—Elective 4—Newborn 9—Unknown	To allow analysis of admissions and episodes of care.
34. Number of Diagnosis Codes.	1 through 5	Enable search of diagnosis fields.
35. Number of Surgical Codes.	1 through 3	Enable search of surgical procedures fields.
36. Actual Age	Three-position age of beneficiary based on the date of admission.	To measure age-based differences.

* The *same* random number will be added to all dates in every discharge record occurring for a beneficiary during the year. The random number will range from ± 1 through 20.

The following subsets will be available (no combinations): one to five States; one to five DRGs; one to five ICD–9–CM codes; and standardized subsamples (5, 10, or 20 percent).

[FR Doc.89–9092 Filed 4–14–89; 8:45 am]

BILLING CODE 4120–03–M

Public Health Service

Centers for Disease Control; Delegation of Authority

Notice is hereby given that in furtherance of the delegation of authority from the Secretary to the Assistant Secretary for Health on January 14, 1981 (46 FR 10016), the

Assistant Secretary for Health has delegated to the Director, Centers for Disease Control, with authority to redelegate, all the authorities pertaining to Lead Poisoning Prevention under section 317A, Title III, of the Public Health Service Act, as amended.

This delegation became effective on April 5, 1989.

Effective date: April 5, 1989.

James F. Dickson III,

Acting Assistant Secretary for Health.

[FR Doc. 89-9073 Filed 4-14-89; 8:45 am]

BILLING CODE 4160-18-M

Health Resources and Services Administration; Delegation of Authority

Notice is hereby given that in furtherance of the delegation of authority of January 27, 1989, from the Secretary of Health and Human Services to the Assistant Secretary for Health, of the authority under section 2523, Title XXV, of the Public Health Service Act, as amended, excluding the authority to issue regulations and to submit reports to the Congress, the Assistant Secretary for Health has delegated to the Administrator, Health Resources and Services Administration, the authority under section 2523, Title XXV, of the Public Health Service Act, as amended, concerning the provision of information to underserved populations for the functions assigned to the Health Resources and Services Administration.

Redelegation

This authority may be redelegated.

Effective Date

This delegation was effective upon date of signature.

Date: April 7, 1989.

James F. Dickson III,

Acting Assistant Secretary for Health.

[FR Doc. 89-9074 Filed 4-14-89; 8:45 am]

BILLING CODE 4160-15-M

Announcement of Availability of Grants for General Family Planning Training Projects

AGENCY: Office of Family Planning, PHS, HHS.

ACTION: Notice.

SUMMARY: The Office of Population Affairs, Office of Family Planning requests applications for grants under the Family Planning Service Training Program authorized under section 1003 of the Public Health Service (PHS) Act [42 U.S.C. 300a-1(a)]. Funds are available to train family planning personnel in order to maintain the high level of performance of family planning service projects.

The Office of Family Planning (OFP) administers Title X of the Public Health Service Act which provides funds for a general training center in each of the ten regions. The regional training centers provide training to enable service grantees to improve the delivery of family planning services to persons from low-income families and other persons desiring such services.

ADDRESS: Application kits may be obtained from and applications must be submitted to: Grants Management Office, Office of Population Affairs, Room 736E, H.H.H. Building, 200 Independence Avenue SW., Washington, DC 20201.

DATE: To receive consideration, grant applications must be received by the Grants Management Officer by June 16, 1989. Applications shall be considered as meeting the deadline if they are either (1) received on or before the deadline date; or (2) postmarked on or before the deadline date and received in time for submission to the review committee. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be accepted as proof of timely mailing. Applications which do not meet the deadline will be considered late applications and will be returned to the applicants.

FOR FURTHER INFORMATION CONTACT: Grants Management Office at area code 202/245-0146 or Program Office at area code 202/245-0151. Staff are available to answer questions and provide limited technical assistance in the preparation of grant applications.

SUPPLEMENTARY INFORMATION: Title X of the Public Health Service Act, 42 U.S.C. 300 *et seq.*, authorizes the Secretary of Health and Human Services to award grants for projects to provide training for family planning service personnel. (Catalog of Federal Domestic Assistance Number 13.260.) This notice announces the availability of approximately $600,000 in funding for three general training projects described below.

Grants will be made to public and/or private nonprofit organizations to assist in the establishment and operation of regional training centers. The award of a grant will take into account the project's ability to meet DHHS requirements and the extent to which the project will provide high quality training to Title X grantees, delegate agencies and clinics in order to improve the delivery of services to family planning users.

Applications are invited for the following three grants:

One general training grant for Department of Health and Human Services (DHHS) Region II (New Jersey, New York, Puerto Rico, Virgin Islands). A funding range of $236,000-$261,000 is under consideration for this grant.

One general training grant for DHHS Region VI (Arkansas, Louisiana, New Mexico, Oklahoma, Texas). A funding range of $220,000-$244,000 is under consideration for this grant.

One general training grant for DHHS Region X (Alaska, Idaho, Oregon, Washington). A funding range of $122,000-$135,000 is under consideration for this grant.

Grants will be approved for project periods of up to two (2) years. Grants are funded in annual increments (budget periods). Funding for all approved budget periods beyond the first year of the grant is contingent upon satisfactory progress of the project, adequate stewardship of Federal funds, and availability of funds.

Statutory and Regulatory Background

Title X of the Public Health Service Act, enacted by Pub. L. 91-572, authorizes grants for projects to provide family planning services to persons from low-income families and others. Section 1001 of the Act (as amended by Pub. L. 94-63 and 95-613) authorizes grants "to assist in the establishment and operation of family planning projects which offer a broad range of acceptable and effective family planning methods, including natural family planning methods, infertility services, and services to adolescents." Section 1003 of the Act, as amended, authorizes the Secretary to make grants to entities and individuals to provide the training for personnel to carry out the family planning services programs.

Prospective applicants and grantees should refer to the regulations in their entirety. The regulations set out at 42 CFR, Part 59, Subpart C, govern grants for general family planning services training.

Role and Operation of the Training Program

The purpose of short-term training, continuing education, inservice education and staff development supported under the Title X General Family Planning training program is to improve or maintain at a high level the performance of family planning service providers.

Under the regulations, "training" means job-specific skill development. This may include traditional classroom

or practical training, although development or use of self-paced, self-instructional or mediated training materials which utilize technological advancements in the learning field are also encouraged. Grantees may provide training services directly or indirectly through subcontractors or consultants.

Successful applicants will be required to work closely with a network of agencies including the Federal Central and Regional Office staff, Title X service delivery providers and regional training advisory committees. This involves review and implementation of national and regional training priorities, solicitation of advice from the regional training advisory committee, and consultation with Title X service delivery providers about training priorities, course content and curricula, and adjustments to reflect changing personnel needs or the result of training program self evaluations or post-training feedback from participants or Title X service grantees. In addition to training in contraceptive methods, proposals must focus at least fifty (50) percent of the training effort in the national training priority area: (1) Clinic management, (2) counseling and client education, (3) family involvement, (4) management of infertility, including adoption, (5) natural family planning (NFP), (6) program management, (7) prevention of sexually transmitted diseases (STDs), including HIV infection and AIDS, (8) adolescent abstinence from premarital sexual activity, and (9) male involvement. (NFP includes various methods and techniques which teach fertility awareness. NFP does not include methods which combine fertility awareness with the use of a contraceptive method as a backup.)

Successful applicants will be responsbile for the overall management of a training program within the geographic area for which the grant is made. This role includes:

- Developing an annual training plan, reflecting national and regional priorities and the training needs of local Title X service grantees;
- Developing criteria for selection of staff for training, including prerequisite qualifications. Such criteria should reflect a sensitivity to the unique needs of grantees for certain types of training, priority for rural areas or Health Manpower Shortage Areas, or other relevant factors;
- Developing a process to review training applications from Title X service grantee personnel. Training grantees will make the final decision about candidates' suitability for training, applying the criteria discussed above;
- Maintaining a balanced training program which uses available resources in the most efficient manner. This involves a balance among the various types of training areas. (e.g., administration, financial management, clinical services);
- Monitoring the balance, utility and efficiency of various training courses through trainee post-training evaluation, as well as the evaluation of training effects provided by trainee's supervisors;
- Sharing materials developed with other training programs so as to avoid unnecessary duplication of effort. All materials developed with Title X funds should be made available at cost to the Title X projects upon request;
- Facilitating trainee receipt of continuing education units where appropriate; and
- Planning an annual continuing education conference and attending at least one national training meeting annually.

Training grantees must receive approval of all training curricula before use, but submission with the application is not required. Reports on the progress of the training program may be requested of the grantee from time to time by the central office.

Application Requirements

Applications must be submitted on the forms supplied (PHS–5161–1) and in the manner prescribed in the application kits available from the Office of Grants Management. Applicants are required to submit an application signed by an individual authorized to act for the applicant agency or organization and to assume for the organization the obligations imposed by the terms and conditions of the grant award. Applicants are required to submit an original application and two copies.

Accepted applications will be subjected to a competitive review process. The results of this review will assist the Deputy Assistant Secretary for Population Affairs in considering competing applications and in making the final funding decisions.

Any public or private nonprofit organization or agency is eligible to apply for a grant. It is not required that the entities applying for a grant be physically located in these regions at the time of application. However, as specified above, only entities proposing to serve Regions II, VI, and X will be eligible to apply under this announcement.

A copy of the legislation and regulations governing this program will be sent to applicants as part of the application kit package. Applicants should use the legislation, regulations and information included in this announcement to guide them in developing their applications. Application should be limited to fifty (50) doubled-spaced pages, not including appendices providing curriculum vitae or statements of organizational capabilities. Awards will be made only to those applicants who have met all applicable requirements.

Section 1008 states that none of the funds appropriated under this title shall be used in programs where abortion is a method of family planning. In addition, the Department maintains an historical policy that grantees may not encourage or promote abortion as a method of family planning within the Title X program.

Grant Award

Eligible competing grant applicants will be reviewed and assessed against the following criteria:

1. The extent to which the proposed training program will improve or increase the delivery of services to Title X clients, particularly persons from low-income families. (5 points)

2. The extent to which the proposed training program has the potential to fulfill the training needs of the family planning service grantees in the areas to be served, which may include among other things:

a. Development of a capability within family planning service projects to provide pre- and in-service training to their own staffs;

b. Improvement of the family planning service delivery skills of family planning and health services personnel; and

c. Improvement in the utilization and career development of paraprofessional and paramedical manpower in family planning services. (20 points)

3. The extent to which the training program proposes appropriate strategies to improve the provision of family planning services in rural areas and HMSAs. (20 points)

4. The capacity of the applicant to make rapid and effective use of the training grant. (5 points)

5. The administrative and management capability and competence of the applicant. (20 points)

6. The competence of the project staff in relation to the services to be provided. (15 points)

7. The applicant's presentation of the project's objectives, the mothods for achieving project objectives, the ability to involve providers and the regional office, and the results or benefits expected. (15 points)

In making grant award decisions the Deputy Assistant Secretary for Population Affairs (DASPA) will take into consideration such factors as the following:

1. The project's objectives on achieving results in national training priority areas and probable effectiveness in furthering national goals.

2. The service providers' commitment to an involvement in the planning and implementation of the training project.

3. The usefuleness to Title X service providers of the proposed training project and its potential for complementing existing training needs.

4. Where competing projects are of approximately equal quality and only one grant can be funded, priority will be given to applicants who will maintain or expand the diversity of experience and approaches of grantees within the Title X training program.

5. The reasonableness of the cost of the project to government and others.

6. The availability of funds.

Review Under Executive Order 12372

Applicants under this announcement are subject to the review requirements of Executive Order 12372, State Review of Applications for Federal Financial Assistance, as implemented by 45 CFR Part 100. As soon as possible, the applicant should discuss the project with the State Single Point of Contact (SPOC) for each State in the area to be served. The application kit contains the currently available listing of the SPOCs which have elected to be informed of the submission of applications. For those States not represented on the listing, further inquiries should be made by the applicant regarding the submission to the Grants Management Office, Office of Population Affairs, Room 736E H.H.H. Building, 200 Independence Avenue SW., Washington, DC 20201. Such comments must be received by the Office of Population Affairs August 15, 1989 to be considered.

When final funding decisions have been made, each applicant will be notified by letter of the outcome of their application. The official document notifying an applicant that a project application has been approved for funding is the Notice of Grant Award, which specifies to the grantee the amount of money awarded, the purposes of the grant, and terms and conditions of the grant award.

Date: April 7, 1989.

Nabers Cabaniss,

Deputy Assistant Secretary for Population Affairs.

[FR Doc. 89-9031 Filed 4-14-89; 8:45 am]

BILLING CODE 4160-17-M

National Toxicology Program; Extension of Public Comment Period on Chemicals Proposed for Sixth Annual Report on Carcinogens

SUMMARY: On February 28, 1989, the National Toxicology Program (NTP) published (at 54 FR 8399–8400) a Notice to elicit public comment on the 13 chemicals proposed for addition to the *Sixth Annual Report on Carcinogens* and on other proposed actions pertaining to this document. The purpose of this Notice is to extend the pertinent comment period to May 16, 1989.

DATE: To assure consideration, comments must now be received at the address indicated below by the close of business on May 16, 1989.

ADDRESS: Comments should continue to be addressed to: National Toxicology Program Public Information Office, MD B2–04, P.O. Box 12233, Research Triangle Park, North Carolina 27709.

SUPPLEMENTARY INFORMATION: The NTP published a Notice in the February 28, 1989, **Federal Register** announcing the proposed addition of 13 substances to the *Sixth Annual Report on Carcinogens*, and other proposed changes in the document. The Notice specified a 45-day comment period, with the deadline for receipt of comments established as April 16, 1989. A number of responses received to date, however, have requested that this period be extended for varying lengths of time on the basis of the large volume of data to evaluate and utilize in preparing relevant responses. Because of the importance of receiving comments from all parties that may be affected by the proposed actions, it has been decided to extend the closing date of the comment period for another 30 days, to May 16, 1989.

Dated: April 12, 1989.

David P. Rall,

Director.

[FR Doc. 89-9165 Filed 4-14-89; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. N-89-1973]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submittted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Davis S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 755–6050. This is not a toll-free number. Copies of the documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: This Notice informs the public that the Department of Housing and Urban Development has submitted to OMB, for emergency processing, an information collection package with respect to the Housing Voucher Program State Matching Initiative.

The information collection requirements in this package are necessary to implement an innovative approach to provide incentives for State governments that make available additional rental assistance for very low-income families. We are requiring State governments to submit pre-applications for the Housing Voucher State Matching Component by June 30, 1989. In order for State governments to meet the above deadline, the Department must issue a public notice governing this initiative by April 28, 1989. Any control number issued by OMB would be valid until June 30, 1989. To ensure that the public has an adequate opportunity to comment on these information collection requirements, HUD also intends to submit the Housing Voucher Notice to OMB for regular paperwork review. The public will then have an additional 60-

day period in which to comment on the paperwork requirements.

The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number; if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and the OMB desk officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act 42 U.S.C. 3535(d).

Dated: April 11, 1989.

James E. Schoenberger,

General Deputy Assistant Secretary for Housing.

Proposal: Housing Voucher Program State Matching Initiative.

Office: Housing.

Description of the Need for the Information and Its Proposed Use: This program is necessary to allow HUD to match State funds appropriated for tenant-based rental assistance programs. This is an administrative initiative to reward State efforts in increasing the availability of housing assistance for very low-income families.

Form Number: None.

Respondents: State or Local Governments.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Housing Voucher Program, State Matching Initiative	20		1		1		20

Total Estimated Burden Hours: 20.

Status: New.

Contact: Gerald Benoit, HUD, (202) 755-6477 or John Allison, OMB, (202) 395-6988.

Dated: April 11, 1989.

[FR Doc. 89-9133 Filed 4-14-89; 8:45 am]

BILLING CODE 4210-27-M

Office of Administration

[Docket No. N-89-1972]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: This Notice informs the public that the Department of Housing and Urban Development has submitted to OMB, for emergency processing, an information collection package with respect to the Survey on Drug Abuse Elimination in Public Housing.

The information collection requirements in this package are necessary to meet the requirements of section 5143 of the Drug-Free Public Housing Act of 1989 (Pub. L. 100-690, Chapter 3, November 18, 1988). Under section 5143, the Department is required to establish a clearinghouse to receive, collect, process, and assemble information regarding the abuse of controlled substances in public housing projects. The Department has requested OMB to complete its paperwork review of the Survey of Drug Abuse Elimination Efforts in Public Housing by April 21, 1989. Any control number issued by OMB to cover this emergency clearance would be valid for no more than 90 days.

The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Date: April 11, 1989.

David S. Cristy,

Deputy Director, Information Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Survey on Drug Abuse Elimination Efforts in Public Housing.

Office: Public and Indian Housing.

Description of the Need for the Information and Its Proposed Use: This information collection requests Public Housing Resident Managers and Tenant Leaders to report to the Secretary on programs, which have been developed and/or implemented to combat drugs in public housing. The collection also solicits recommendations for fighting drugs in public housing projects.

Form Number: None.
Respondents: Non-Profit Institutions.
Frequency of Submission: Single-time.
Reporting Burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
Survey	400		1		1		400

Total Estimated Burden Hours: 400.
Status: New.
Contact:
David Caprara, HUD, (202) 755–8702.
John Allison, OMB, (202) 395–6880.

Date: April 11, 1989.

[FR Doc. 89–9055 Filed 4–14–89; 8:45 am]
BILLING CODE 4210–01–M

[Docket No. N–89–1970]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.
ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 755–6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the Office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Date: April 4, 1989.

John T. Murphy,
Director, Information Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Comprehensive Improvement Assistance Program (CIAP): Reporting/Monitoring.
Office: Public and Indian Housing.
Description of the Need for the Information and Its Proposed Use: The information collected will provide for reporting and monitoring requirements that are necessary for Public Housing Authorities administration of approved CIAP programs and compliance with program requirements.
Form Number: HUD–52826 and HUD–53001.
Respondents: State or Local Government and Non-Profit Institutions.
Frequency of Submission: On Occasion, Quarterly.
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–5286, Schedule/Report of Modernization Expenditures	1,100		4		1.5		6,600
Narrative Report on Management Improvement	300		4		1.5		1,800
Request for Proposal for Professional Services Relating to Management Improvements	200		1		2.0		400
HUD–53001, Actual Modernization Cost Certificate	400		1		1.0		400

Total Estimated Burden Hours: 9,200.
Status: Extension.
Contact:
Pris Buckler, HUD, (202) 755–6640.
John Allison, OMB, (202) 395–6880.

Date: April 4, 1989.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Preliminary Site Report by Indian Housing Authority.
Office: Public and Indian Housing.
Description of the Need for the Information and Its Proposed Use: This information details the type of site proposed for housing construction in terms of land status, size of site and proposed density, zoning status, physical characteristics, and availability of utilities in order to determine whether a site is suitable for housing.
Form Number: HUD–3188.
Respondents: State or Local Government and Non-Profit Institutions.
Frequency of Submission: On Occasion.
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Preliminary Site Report	100		1.5		4		600

Total Estimated Burden Hours: 600.
Status: Reinstatement.
Contact:
Pat Arnaudo, HUD, (202) 755–1015.
John Allison, OMB, (202) 395–6880.

Date: April 4, 1989.

[FR Doc. 89–9056 Filed 4–14–89; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. N–89–1971]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposals.

ADDRESS: Interested persons are invited to submit comment regarding these proposals. Comments should refer to the proposal by name and should be sent to John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755–6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals for the collections of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office fo the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency from number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Date: March 31, 1989.

John T. Murphy,

Director, Information Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Fair Housing Assistance Program Application.
Office: Fair Housing and Equal Opportunity.
Description of the Need for the Information and Its Proposed Use: This information collection redesigns the Fair Housing Assistance Program into a single funding mechanism combining competitive and non-competitive components. The information collection will provide HUD with the necessary information for regulation implementation. The requested information will also affect 120 public fair housing enforcement agencies eligible for funding.
Form Number: None.
Respondents: State or Local Governments.
Frequency of Submission: Quarterly and Annually.
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Application Kit	70		1		38		2,600
Cooperative Agreement	120		4		4		1,920
Recordkeeping	70		4		2		560

Total Estimated Burden Hours: 5,140.
Status: Revision.
Contact:
Maxine B. Cunningham, HUD, (202) 755–0455
John Allison, OMB, (202) 395–6880

Date: March 31, 1989.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Collection of Multifamily Assisted Housing Addresses and Site Identification Codes.
Office: Policy Development and Research.
Description of the Need for the Information and Its Proposed Use: The Data collected will be used to generate information descriptive of HUD's multifamily assisted housing programs. It will be used to more effectively monitor HUD's programs as well as target compliance reviews.
Form Number: HUD–951.
Respondents: State or Local Governments, Businesses or Other For-Profit, and Non-Profit Institutions.
Frequency of Submission: One Time Only.
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–951	21,000		3		.33		20,790

Total Estimated Burden Hours: 20,790.
Status: Extension.
Contact:
John B. Carson, Jr., HUD, (202) 755–5574
John Allison, OMB, (202) 395–6880

Date: March 30, 1989.

[FR Doc. 89–9057 Filed 4–14–89; 8:45 am]
BILLING CODE 4210–01–M

Office of Assistant Secretary for Housing Federal Housing Commissioner

[Docket No. N–89–1965; FR–2615]

Section 202 Loans for Housing the Elderly; Announcement of Fund Availability Fiscal Year 1989

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice of fund availability.

SUMMARY: HUD is announcing the availability of Fiscal Year 1989 loan authority under the section 202 Housing for the Elderly Direct Loan Program. The loan authority will be used to provide direct Federal loans for a maximum term of 40 years under section 202 of the Housing Act of 1959 to assist private, nonprofit corporations and nonprofit consumer cooperatives in the development of housing and related facilities to serve the elderly. The Department of Housing and Urban Development—Independent Agencies Appropriations Act, 1989 (Pub. L. 100–404, approved August 19, 1988) (Fiscal Year 1989 Appropriations Act) requires that 25 percent of the direct loan authority appropriated for Fiscal Year 1989 shall be used only to provide housing for the handicapped families and individuals. To facilitate administration, a separate Notice of Fund Availability will be published in the **Federal Register** for the nonelderly handicapped program.

EFFECTIVE DATE: April 17, 1989.

FOR FURTHER INFORMATION CONTACT: The HUD Field Office for your jurisdiction.

SUPPLEMENTARY INFORMATION: Notice hereby given under Title 24 Code of Federal Regulations Part 885, that the Department of Housing and Urban Development will be accepting Applications for Fund Reservations from eligible Sponsors (see 24 CFR 885.5 for the definition of "Sponsor" and other terms) for direct loans for the construction or substantial rehabilitation of housing and related facilities for dwelling use by elderly under the provisions of section 202 of the Housing Act of 1959.

The Assistant Secretary for Housing is assigning Fiscal Year 1989 section 202 loan fund authority to the HUD Field Offices identified below in conformance with the provisions of section 213(d) of the Housing and Community Development Act of 1974. While the precise number of units to be funded depends upon the number of approvable applications received, the following distribution plans shows the estimated numbers of units and Fiscal Year 1989 loan authority under which applications may be funded in each Field Office jurisdiction identified below.

FISCAL YEAR 1989, SECTION 202, DISTRIBUTION PLAN BY HUD FIELD OFFICE JURISDICTION

	Estimated number of units	Estimated loan authority
Boston Regional Office:		
Boston	189	$12,453,000
Hartford	87	4,748,000
Manchester (Maine, New Hampshire, Vermont)	90	4,444,000
Providence	34	1,717,000
Total	400	23,362,000
New York Regional Office:		
Buffalo	159	6,884,000
Caribbean	55	2,263,000
Newark	190	11,932,000
New York	410	29,559,000
Total	814	50,638,000
Philadelphia Regional Office:		
Baltimore	66	3,333,000
Charleston	49	2,120,000
Philadelphia (Delaware)	186	9,968,000
Pittsburgh	109	5,503,000
Richmond	86	3,764,000
Washington, D.C. (portion of Maryland and Virginia)	62	3,255,000
Total	558	27,943,000
Atlanta Regional Office:		
Atlanta	132	5,845,000
Birmingham	106	3,824,000
Colmubia	92	3,220,000
Greensboro	151	6,219,000
Jackson	85	3,151,000
Jacksonville	250	11,848,000
Louisville	102	4,099,000
Knoxville	43	1,596,000
Nashville	64	2,439,000
Total	1,025	42,241,000
Chicago Regional Office:		
Chicago	287	15,669,000
Cincinnati	50	2,237,000
Cleveland	115	5,207,000
Columbus	69	2,695,000
Detroit	97	4,693,000
Grand Rapids	57	2,170,000
Indianapolis	125	4,375,000
Milwaukee	118	5,284,000
Minneapolis/St. Paul	105	4,323,000
Total	1,023	46,653,000
Fort Worth Regional Office:		
Fort Worth (New Mexico)	142	5,408,000
Houston	73	2,482,000
Litte Rock	106	3,221,000
New Orleans	69	2,842,000
Oklahoma City	73	2,490,000
San Antonio	66	2,382,000
Total	529	18,744,000
Kansas City Regional Office:		
Des Moines	84	3,375,000
Kansas City (portion of Missouri:	115	3,910,000
Omaha	47	1,598,000
St. Louis	90	3,517,000
Total	336	12,400,000
Denver Regional Office:		
Denver (Montana, North Dakota, South Dakota, Utah and Wyoming)	140	6,060,000
Total	140	6,060,000
San Francisco Regional Office:		
Honolulu (Guam)	32	1,645,000
Los Angeles	359	21,825,000
Phoenix	60	2,596,000
Sacramento & San Francisco (Nevada)	231	13,095,000
Total	682	39,161,000
Seattle Regional Office:		
Portland (Idaho)	84	3,080,000
Seattle	89	3,718,000
Total	173	6,798,000
National Total	5,680	$274,000,000

The foregoing distribution plan is a guide for prospective Sponsors. It estimates the loan authority that is expected to be available for projects for the elderly in each HUD Field Office jurisdiction. However, these unit and loan estimates are subject to change by Regional or Field Offices. Changes may be necessary to assure that there is enough loan authority in each Field Office to support housing projects of feasible size. Each HUD Field Office receiving Fiscal Year 1989 loan authority will publish one Invitation for Applications for section 202 Fund Reservation (Invitation) for its jurisdiction indicating the amount of loan authority and the maximum number of units this amount is expected

to assist, as well as the total number of units available for metropolitan and nonmetropolitan areas. Whether an area is "metropolitan" or "nonmetropolitan" will be determined in accordance with the redefinitions of metropolitan statistical areas announced by the Office of Management and Budget, effective June 30, 1983 (See OMB Public Affairs Issuance 83–20, June 27, 1983, and subsequent changes made June 27, 1984, June 27, 1985 and October 18, 1986.)

To provide equitable geographic distribution of the limited number of section 202 units for the elderly, a Field Office may establish a maximum number of units that may be requested under any one application. This unit limitation will vary by Field Office, depending on the number of units available for either the metropolitan or nonmetropolitan category of funds. Additionally, the limitation set forth in Paragraph (11) below will apply.

Priority Categories for Selection

The purpose of the priority system for the section 202 program is to assure that applications from localities that have been relatively underfunded over the years receive priority consideration and are treated in an equitable manner.

In view of the limited funds for projects in Fiscal Year 1989, and in order to assure open competition, Field Offices will not suballocate funds within their jurisdiction. However, 20–25 percent of available funds will be allocated to nonmetropolitan areas to meet rural housing needs. Field Office Invitations will identify the total number of units available for metropolitan and for nonmetropolitan areas of the jurisdiction. Applications received for projects in metropolitan areas will compete against each other; applications received for projects in nonmetropolitan areas will similarly compete against each other. The 20–25 percent of funds allocated to the nonmetropolitan areas will not necessarily be such in each area if there are not enough approvable applications to accommodate the allocated loan authority. At the time of end-of-year selection determinations, the Department may transfer unused authority from Field Offices that are without sufficient approvable applications to other Field Offices within the same State where there is not sufficient authority for all approvable applications. When a Field Office jurisdiction covers more than one State, separate metropolitan or nonmetropolitan allocation areas may be established, to the extent practicable, for each State's part of the jurisdiction. Any amounts allocated to a State or to areas or communities within a State will not be reallocated for use in another State unless the Department determines that other areas or communities in the same State cannot use the amounts within that same fiscal year.

In order to assure that applications are funded in the areas of greatest need, approvable applications will be divided into two categories, each of which shall have two subcategories. The categories and subcategories are as follows:

Category A—Applications for the elderly projects which will be located in localities which have previously been underfunded relative to their needs and the funding needs of other localities.

(1) Such applications for elderly projects which are in localities within jurisdictions having rental vacancy rates of 5 percent or less;

(2) Such applications for elderly projects which are in localities within jurisdictions having rental vacancy rates in excess of 5 percent.

Category B—Applications for elderly projects which will be located in localities which have not been underfunded relative to their needs and the funding needs of other localities.

(1) Such applications which are in localities within jurisdictions having rental vacancy rates of 5 percent or less;

(2) Such applications which are in localities within jurisdictions having rental vacancy rates in excess of 5 percent.

Applications shall be selected for funding first from Category A(1), second from Category A(2), third from Category B(1), and finally from Category B(2). An application in a lower subcategory which is judged clearly superior to one in the next higher subcategory, i.e., its final score is at least 10 points higher, may be selected for funding. For example, if an application in Category A(1) has a final score of 57, and an application in Category A(2) has a score of 67, the higher-scored application may be selected over the lower-scored application. The rule would not apply to projects that are more than one subcategory apart, as for example, a higher-scored project in either B(1) or B(2) could not be selected over a lower-scored project in A(1).

Schedule for Section 202 Invitations, Workshops and Application Deadline

All applications for section 202 Fund Reservations submitted by eligible Sponsors must be filed with the appropriate HUD Field Office and must contain all exhibits and additional information as required by 24 CFR 885.210, except as modified by this Notice.

In April 1989, HUD Field Offices will publish a one-time Invitation in newspapers of general circulation, and in any minority newspapers serving the Field Office jurisdiction. Field Offices will accept applications after publication of the Invitation. No application will be accepted after the regular closing time of the appropriate Field Office on June 15, 1989 unless that time is extended by Notice published in the **Federal Register**. Applications that are mailed may be accepted provided they bear a postmark date or receipt of mailing that is no later than the regular closing time of the appropriate Field Office on June 15, 1989.

Organizations interested in applying for a section 202 Fund Reservation should provide the appropriate Field Office with their names, addresses and telephone numbers, advise the Field Office whether they wish to attend the workshop described below, and secure the program handbook and Application Package. HUD encourages minority organizations to participate in this program as Sponsors. Field Offices will conduct workshops during late April or early May 1989 to explain the section 202 Program and the Seed Money Loan program under section 106(b) of the Housing and Urban Development Act of 1968. Under this latter program, HUD makes direct, interest-free loans to approved nonprofit section 202 eligible Borrowers to cover certain preconstruction expenses. At the workshops, Application Packages will be distributed, application procedures and requirements (including the Department's equal opportunity, environmental, design and cost containment requirements and required exhibits) will be discussed, and concerns such as local market conditions, building codes, historic preservation, floodplain management, zoning and housing costs will be addressed. HUD strongly recommends that prospective applicants attend the local Field Office workshop. More detailed information covering the time and place of the particular workshops will be set out in the Field Office Invitation. Interested disabled persons should contact the Field Office Invitation. Interested disabled persons should contact the Field Office to assure that any necessary arrangements can be made for them to be able to attend and participate in the workshop.

Section 162 of the Housing and Community Development Act of 1987 (Pub. L. 100–242, approved February 5, 1988) amended section 202 to better serve the special housing and related needs of nonelderly handicapped

families and individuals. Section 162 authorized a new type of project assistance payment to replace assistance made under section 8. On November 2, 1988 (53 FR 44288) HUD published a proposed rule implementing the program. The Department is analyzing the public comments received and will publish the Cinal rule shortly. A separate Notice of Fund Availability for the Fiscal Year 1989 nonelderly handicapped program will announce the deadline for filing applications as well as the workshops to be conducted for the nonelderly handicapped program.

Additional Information

(1) Part 885 currently requires the Borrower to be in existence when the application for the section 202 fund reservation is submitted, and requires the application to include specific information concerning the Borrower. In Fiscal Years 1986 and 1988, the section 202 NOFA permitted the Sponsor to delay the formation and submission of information on the Borrower until after the issuance of the fund reservation. Based on this experience, HUD has determined that the deferral of the formation of the Borrower results in more and better applications, reduces the costs to Sponsors that are not funded, and reduces HUD processing time and effort thus helping to meet the tight deadline for application processing. Accordingly, the formation of the Borrower corporation will not be a prerequisite to submission of an Application for Fund Reservation this fiscal year. The submission requirement for Borrowers described in § 885.210(b)(g), (12) and (13) may be satisfied with all application requirements with respect to the Sponsor, and in addition, the requirements imposed on the Borrower under § 885.210(b) (3), (4), (5), (7), and (8).

Because the formation of the Borrower corporation is not required at the Application stage, the applicants will be the Sponsors and the applications will be reviewed and rated based solely on the qualifications of the Sponsor, as well as other program requirements, as modified by this NOFA. If a Sponsor submits information on the Borrower, the information will not be reviewed, and approval of the application will NOT constitute approval of the Borrower.

The requirements under § 885.225 for issuance of the fund reservation to the Borrower are modified to provide that the fund reservation shall be issued to the Sponsor and transferred to a separate single-purpose Borrower corporation upon satisfactory compliance by the Borrower with all submission requirements and approval of its Conditional Commitment Application.

The request for direct loan financing and Conditional Commitment Application under § 885.400 shall be submitted by an eligible single-purpose Borrower corporation created by the Sponsor receiving a fund reservation which shall submit with such Application evidence of compliance with the requirements waived at the fund reservation application submission stage. Any information below that makes reference to an eligible Borrower corporation is provided as guidance for use at the Conditional Processing stage.

(2) In evaluating applications for section 202 Fund Reservations, the Department's equal opportunity, environmental and cost containment requirements are significant factors in the ranking process. Further, in order to eliminate minimally qualified applications, only those proposals that meet certain threshold scores on the standard ranking format will be considered for funding. These requirements will be included in the section 202 Application Package available at the local HUD Field Office. The section 202 workshops will include discussions of these and other application requirements.

(3) Religious bodies may serve as project Sponsors, but must establish a Borrower corporation as a separate legal entity to be the owner, prior to the submission of a Conditional Commitment Application. When the Borrower corporation is created, no reference to religion or religious purposes may be included in the Articles of Incorporation or By-Laws of that corporation. The mere recital in a Borrower's Articles of Incorporation that it is organized exclusively for religious, charitable, scientific, literary or educational purposes within the meaning of section 501(c)(3) of the Internal Revenue Code will not by itself make a Borrower ineligible. However, the dissolution clause must provide that, upon dissolution or winding up of the corporation, its assets remaining after payment of all debts and liabilities, shall be distributed to a nonprofit fund, foundation or corporation other than one created for a religious purpose, which has established its tax exempt status under section 501(c)(3) of the Internal Revenue Code.

(4) Borrower corporations will not be permitted to engage in any other business or activity, including the operation of any other rental project, or to incur any liability or obligation not in connection with the proposed project. The intent of this requirement is to give HUD sole claim to the assets of the Borrower corporation in case of default under the Regulatory Agreement.

(5) Sponsors, including churches, must have a current nonprofit tax exemption ruling under the IRS Code.

(6) Applications will be accepted only from eligible Sponsors which must be eligible entities as defined in 24 CFR 885.5.

(7) Because of the nonprofit nature of the section 202 program, no officer or director of the Sponsor or Borrower, or trustee, member, stockholder or authorized representative of the Borrower is permitted to have any financial interest in any contract in connection with the provision of services, the provision of goods or supplies, project management, procurement of furnishings and equipment, construction of the project, procurement of the site or other matters whatsoever, except that this prohibition does not apply to any management contracts (or management fees associated therewith) entered into by the Borrower with the Sponsor or its nonprofit affiliate.

(8) Where the proposed project site is being optioned or acquired from a general contractor or its affiliate, the section 202 Borrower will be prohibited from selecting that contractor to construct the project for which an Application for funding is being made. Further, the proposed contractor may not be the attorney, architect, housing consultant or management agent for the project. This prohibition extends to any firm or subsidiary having an identity of interest with the contractor.

(9) The Sponsor must have control of the project site at the time of submission of its loan application. The contract of sale, option agreement, or other binding agreement must have been executed prior to the application deadline date.

In cases involving sites to be acquired from a local public body, satisfactory evidence of site control consists of evidence that the public body(a) possesses clear title to the land and (b) has entered into a legally binding commitment to the Sponsor to convey the property to a Borrower corporation created by the Sponsor upon its receiving section 202 funding. A mere recitation of intent to convey the land to a Borrower to be created by the Sponsor made by an official of the public body to the Sponsor or preliminary actions on the part of the public body are not adequate evidence of site control.

(10) Under 24 CFR 885.215, no single Sponsor may submit an Application or

Applications in any HUD Region for more than 300 units.

(11) Reservations for projects intended for the elderly will not be approved for more than 200 units, including units for the elderly already on or near the site, as well as the units being requested. This policy is intended to expand the number of areas in the community where the elderly can live in housing specifically designed to meet their needs. This limitation does not rule out housing for the elderly in submarket areas of major cities where privately or publicly financed housing for the elderly already exists, but is designed to discourage additional housing for the elderly in proximity to existing privately or publicly financed facilities where the additional units would result in a concentration of over 200 units. However, the Field Office Manager may waive the requirement in a given area or locality, if, for example, there are no other suitable sites available for housing for the elderly.

(12) To be responsive to the Invitation, Sponsors must not request in a single application more units than advertised for the respective metropolitan or nonmetropolitan areas designated in the Invitation, and the number of units applied for must not exceed any maximum number of units per Application that may be established by the local Field Office. Applications exceeding these limits will be rejected.

(13) If the Sponsor elects to use a housing consultant, it should be careful to select a consultant who is knowledgeable about the Section 202 housing program. Failure to meet program requirements will be a cause for rejection of the application, whether or not a housing consultant is used by the Sponsor. Sponsors may wish to contact previous groups which have used the consultant under consideration in order to make a determination as to the consultant's qualifications.

(14) Deficiency letters will be issued by the Field Offices and the Sponsors will be allowed 14 calendar days from the date of the letter to submit the identified missing information or to explain inconsistencies in the application submission. No amendments or corrections to applications will be permitted after the June 15, 1989 application filing deadline. Further, all necessary actions (e.g., adoption of corporate resolutions) must have been taken on or before the deadline date for filing applications.

(15) HUD will make contact authority and budget authority under section 8 of the United States Housing Act of 1937 available for successful Sponsors, subject to the availability of funds.

(16) A notice of approval will be sent to the Sponsors selected in accordance with the requirements of 24 CFR 885.220 (Review of Application for Fund Reservation) and on the basis of information furnished by the Sponsors as set forth in the Field Office Application Package.

(17) To be considered for Fiscal Year 1989 funding, new applications must be submitted under this Notice of Fund Availability.

(18) 24 CFR 885.410(j) contains a minimum capital investment requirement. This requirement applies to all section 202 projects receiving fund reservations in Fiscal Year 1989. The minimum capital investment is currently established at one-half of 1 percent (0.5%) of the total HUD-approved mortgage amount, not to exceed $10,000. Section 106(b) Seed Money Loan Funds, under 24 CFR Part 271, may not be used to satisfy the minimum capital investment requirement.

(19) HUD's regulations at 24 CFR Part 885 do not reflect several recent changes made to the section 202 program that may be of relevance to Sponsors making applications under this NOFA. These changes were contained in the Housing and Community Development Act of 1987 (Pub. L. 100–242, approved February 5, 1988) (1987 Act); and the Housing and Urban Rural Recovery Act of 1983 (Pub. L. 98–181), approved November 30, 1983) (HURRA).

Three statutory changes made in section 223(e) of HURRA have not, as yet, been covered by HUD's regulations. The statutory changes include:

—HURRA added a provision specifying that, unless otherwise requested by the Sponsor, a maximum of 25 percent of the units in a project may be efficiency units, subject to a HUD determination that such units are appropriate for the elderly or handicapped population residing in the vicinity of the project or to be served by the project. The Department, in its annual housing notice governing each fiscal year's program, states that all projects for the elderly must include 25 percent efficiency units, unless a Sponsor can demonstrate that there is an insufficient market for such units. It also allows a Sponsor to choose to pay the additional cost of providing all one-bedroom units. (At its discretion, a Sponsor may elect to include more than 25 percent efficiency units.) In a final rule revising Part 885 published August 5, 1987 (52 FR 29010), HUD indicated that this change would be incorporated into a pending proposed rule. HUD now intends to implement this HURRA requirement with a proposed rule that addresses certain 1987 Act changes.

—HURRA also added a provision prohibiting the Secretary from denying any Sponsor the opportunity voluntarily to pay for amenities or design features not included in the loan. The annual housing notice specifies that a Sponsor may elect to pay for excess amenities that would not be permitted under the Department's cost containment guidelines or, if the Department denies a request for a waiver of the 25 percent efficiency unit requirement, may elect to pay the additional cost of one-bedroom units. (Note: Payment for excess amenities is permissible only if the residential characteristic of the proposal is not altered.) This change will also be incorporated in a proposed rule making the 1987 Act changes.

—Finally, HURRA added a provision requiring the Secretary to take into account special design features necessary for housing for the elderly and handicapped and to adjust cost limits at least once annually to reflect changes in construction costs. The Department modifies the base cost limits published in 24 CFR 885.410, as necessary, by adjusting upward or downward the high cost percentages for each base locality. HUD annually reviews the high costs percentages to assure that adjustments are made to reflect changes in construction costs. In addition, special design features provided by section 202, such as multi-purpose space, central dining rooms, etc., are not included in the calculations for the section 202 per unit cost limits. In FR 2445 (published March 18, 1988, 53 FR 8874) HUD issued a final rule revising the base unit costs for various programs, including the base unit costs for the section 202 program.

(20) In an elderly housing project, 10 percent of the units as well as all community facilities and common areas must be designed to be accessible to and usable by wheelchair users or other persons with mobility impairments. The 10 percent accessible unit requirement may be reduced where justified by local needs assessment, but such reduction shall not exceed 5 percent. The accessible units will be available for occupancy by both elderly and nonelderly handicapped individuals.

In addition, covered multifamily dwellings for first occupancy after March 13, 1991 must be designed and constructed to meet the accessibility and adaptability requirements contained in the final rule published January 23, 1989 (54 FR 3232) implementing the Fair Housing Amendments of 1988 (Pub. L. 100–430, approved September 13, 1988.

(21) To the extent that funds are available to fund new projects from the

Headquarters Reserve (which Reserve shall constitute no more than 15 percent of the total section 202 Fiscal Year 1989 loan authority), applications which are otherwise approvable but not funded by the Regional Offices from the field allocation may be considered for Headquarters funding, provided they meet at least one of the conditions set forth in section 213(d)(4) of the Housing and Community Development Act of 1974, as amended:

(A) Unforeseeable housing needs, especially those brought on by natural disasters or special relocation requirements;

(B) Support for minority enterprise;

(C) Providing assisted housing as a result of the settlement of litigation;

(D) Small research and demonstration projects;

(E) Lower-income housing needs described in housing assistance plans; or

(F) Innovative housing programs or alternative methods for meeting lower-income housing needs approved by the Secretary.

(22) On March 2, 1989, the Department of Transportation (DOT) published in the **Federal Register** (54 FR 8912) a final governmentwide rule implementing the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA). The rule supersedes 24 CFR Part 42 and applies to all HUD-assisted programs, including section 202 projects.

Under the new URA statutory changes and the new rule at 49 CFR Part 24 all persons (families, individuals, businesses, nonprofit organizations and farms) displaced (forced to move permanently) on or after April 2, 1989 as a direct result of privately undertaken rehabilitation, demolition or acquisition for a HUD-assisted project are entitled to relocation payments and other assistance under the URA.

The application of the URA rule to a displacement does not depend on the date when the HUD assistance was approved. The new rule is triggered if the person moves on or after April 2, 1989 and the move is determined to be "for the HUD-assisted project." Even a person forced to move before HUD approval of a project may be determined to have been displaced "for the HUD-assisted project."

(23) Sponsors are invited to submit applications for section 202 Fund Reservation in accordance with this Notice and 24 CFR Part 885.

A finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The finding of No Significant Impact is available for public inspection during business hours in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–220), the information collection requirements contained in these section 202 application requirements have been assigned OMB control number 2502–0267.

The Catalog of Federal Domestic Assistance Program title and number is 14.157, Housing for the Elderly or Handicapped.

(Section 202, Housing Act of 1959 (12 U.S.C. 1701q), section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d))

Dated: April 12, 1989.

James E. Schoenberger,

General Deputy Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 89–9134 Filed 4–14–89; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permits

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT–735319

Applicant: Detroit Zoological Parks, Royal Oak, MI.

The applicant requests an amendment to their pending application to import an additional three chimpanzees (*Pan troglodytes*) from West Germany for purposes of propagation and display. Two of the chimpanzees were born in captivity in 1970 and 1972, and the third has been held in captivity since 1973.

PRT–736350

Applicant: Western Ecological Services Co., Inc., Novato, CA.

The applicant requests a permit to capture and release California freshwater shrimp (*Syncaris pacifica*) in Marin, Napa, and Sonoma Counties, California, to determine the presence or absence of the species. Some specimens may also be incidentally captured during other aquatic investigations within the range of the California freshwater shrimp. Information on occurrence, distribution, and habitat will be used to identify potential project-related impacts on the species.

PRT–697819

Applicant: U.S. Fish and Wildlife Service, Regional Director, Region 4, Atlanta, GA.

The applicant requests an amendment to their current permit to allow take of additional species of wildlife and plants for scientific purposes and the enhancement of propagation or survival in accordance with Recovery Plans, listing, or other Service work for those species.

PRT–736351

Applicant: U.S. Fish and Wildlife Service, Regional Director, Region 7, Anchorage, AK.

The applicant requests a permit to allow for the take of 5–10 Aleutian shield fern (*Polystichum aleuticum*) fronds for scientific purposes and the enhancement of propagation and survival of the species.

PRT–736284

Applicant: Zoological Society of San Diego, San Diego, CA.

The applicant requests a permit to import one male and two female captive-born oriental white storks (*Ciconia ciconia boyciana*) from Vogelpark, Walsrode, Germany, for the purpose of enhancement of propagation.

PRT–736289

Applicant: Zoological Society of San Diego, San Diego, CA.

The applicant requests a permit to import one pair of captive-born babirusa (*Babyrousa babyrussa*) and 4 blood samples from Antwerp Zoo, Antwerp, Belgium, for purposes of enhancement of propagation and exhibition.

PRT–736397

Applicant: Paul Soffron, Ipswich, MA.

The applicant requests a permit to purchase 3 captive-born wolves (*Canis lupus*) in interstate commerce from Charles Dysart, Henrietta, N.C. for enhancement of propagation of the species through breeding and conservation education.

PRT–736394

Applicant: Edward C. Land, Mobile, AL.

The applicant requests a permit to import the personal sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*), culled from the captive-herd maintained by F. Bowker, Grahamstown, Republic of South Africa, for the purpose of enhancement of survival.

PRT–736414

Applicant: Cape May County Park Zoo, New Jersey.

The applicant requests a permit to purchase in interstate commerce one captive-born female ocelot (*Felis pardalis*) from the Salsbury Zoo, Salsbury, Maryland, for breeding purposes.

PRT-736415

Applicant: Cleveland Metroparks Zoo, Cleveland, Ohio.

The applicant requests a permit to import one female and one male, captive-born cheetah (*Acinonyx jubatus*) from John Rens Zoo Animal Broker, Wassenaar Netherlands, for the purpose of enhancement of propagation.

PRT-736691

Applicant: Joseph B. Sousa, Bristol, RI.

The applicant requests a permit to purchase in interstate commerce one pair of captive-born Indian pythons (*Python molurus molurus*) from Joseph Pierce, Altura, CA, and one pair of captive-born eastern indigo snakes from Richard Zuchouski, Baltimore, MD, for enhancement of propagation.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 403, 1375 K Street NW., Washington, DC 20005, or by writing to the Director, U.S. Office of Management Authority, P.O. Box 27329, Central Station, Washington, DC 20038-7329.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Date: April 6, 1989.

R.K. Robinson,

Chief, Branch of Permits, U.S. Office of Management Authority.

[FR Doc. 89-9066 Filed 4-14-89; 8:45 am]

BILLING CODE 4310-AN-M

Bureau of Land Management

[CO-930-09-4214-12; C-9504, C-066566]

Termination of Classification and Opening of Public Lands; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Opening order.

SUMMARY: This order opens public lands segregated by the Recreation and Public Purposes Act and by the Classification and Multiple Use Act.

EFFECTIVE DATE: May 11, 1989.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215-7076, 303-236-1768.

1. The lands described below have been in a lease under the Recreation and Public Purposes Act. The lease has terminated and the classification dated May 11, 1961 is hereby terminated as authorized by 43 CFR 2741.5(h)(2):

New Mexico Principal Meridian

T. 33 N., R. 9 E.,
Sec. 32, NE¼NE¼SE¼.

The area described contains approximately 10 acres in Conejos County, Colorado.

2. By Notice of Proposed Classification dated May 7, 1970, and Notice of Classification dated November 6, 1970, issued under the Classification and Multiple Use Act of 1964, public lands within the following townships and sections were segregated from location and entry under the general mining laws and sales under the Materials Act of July 31, 1947, as amended. It has been determined that the segregation is no longer needed, therefore the order effecting it is hereby cancelled:

Sixth Principal Meridian

T. 8 S., R. 96 W.,
Secs. 7, 8, and 18;
T. 8 S., R. 97 W.,
Secs. 13, 23, and 24;
T. 8 S., R. 100 W.,
Sec. 3;
T. 9 S., R. 100 W.,
Sec. 3.

The areas described aggregate approximately 530.67 acres in Mesa County, Colorado.

3. At 10 a.m. on May 11, 1989, the lands described in paragraphs one and two shall be open to operation of the public land laws, including the United States mining laws, subject to valid existing rights. Appropriation of lands under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation including attempted adverse possession under 30 U.S.C. section 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

4. At 10 a.m. May 11, 1989, the lands described in paragraph two, which have been closed to sales under the Materials Act of 1947, as amended, are open.

All of the lands have been, and continue to be open to operation of the mineral leasing laws.

Neil F. Morck,

State Director.

[FR Doc. 89-9068 Filed 4-14-89; 8:45 am]

BILLING CODE 4310-JB-M

[NV-930-09-4212-11; N-48112]

Realty Action; Lease of Public Land for Recreation and Public Purposes; Carson City, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action classifying public land.

SUMMARY: The following described 3.75 acres of public land has been examined and identified as suitable to be classified for lease under the Recreation and Public Purposes Act, as amended (43 U.S.C. 869, et seq.):

Mount Diablo Meridian, Nevada

T. 15 N., R. 21 E.,
Sec. 6, N½N½SW¼W½ of Lot 2 of the NW¼, N½NW¼SE¼W½ of Lot 2 of the NW¼.

A 5-year lease with the option to renew will be offered to Carson City for the subject 3.75 acres of land along with the 15 acres classified on January 30, 1989, to be used as a model airplane-radio control flying field and parking area.

The land is not required for federal purposes. Classification and issuance of a lease is consistent with Bureau planning a for this area and would be in the public interest.

The lease, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will be subject to: Those rights for transmission line purposes granted to Sierra Pacific Power Company by Right-of-Way Grant Nev-059133.

Detailed information concerning this action is available for review at the Bureau of Land Management Carson City District Office.

Upon publication of this Notice in the **Federal Register**, the above described land will be segregated from all forms of appropriation under the public land laws, including location under the general mining laws, but not the Recreation and Public purposes Act, the mineral leasing laws and material sales. The segregative effect will terminate as specified in an opening order to be published in the **Federal Register**.

For a period of 45 days from the date of publication of this Notice in the **Federal Register**, interested parties may submit comments to the District Manager, 1535 Hot Springs Road, Suite 300, Carson City, Nevada 89706–0638. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification of the land described in this Notice will become effective 60 days from the date of publication in the **Federal Register.**

Kelly M. Madigan,

Acting District Manager.

Dated: April 5, 1989.

[FR Doc. 89–9090 Filed 4–14–89; 8:45 am]

BILLING CODE 4310–HC–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–167 (Sub–1091X)]

Consolidated Rail Corp.—Abandonment Exemption—In Conshohocken, Montgomery County, PA

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 0.46-mile line of railroad between milepost 13.14 at the east side of Cherry Street to milepost 13.6, approximately 105 feet east of the east side of Fayette Street, in Conshohocken, Montgomery County, PA.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on May 17, 1989 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by April 27, 1989.[3] Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by May 8, 1989 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: John J. Paylor, Consolidated Rail Corporation, 1138 Six Penn Center Plaza, Philadelphia, PA 19103.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio.*

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by April 21, 1989. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE at (202) 275–7316. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: April 7, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89–9078 Filed 4–14–89; 8:45 am]

BILLING CODE 7035–01–M

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 4 I.C.C.2d 400 (1988). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987), and final rules published in the **Federal Register** on December 22, 1987 (52 FR 48440–48446).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

DEPARTMENT OF JUSTICE

Office of Justice Programs; Office of Juvenile Justice and Delinquency Prevention

National Conference of State Juvenile Justice Advisory Groups

ACTION: Notice of meeting.

The National Coalition of State Juvenile Justice Advisory Groups and the Office of Juvenile Justice and Delinquency Prevention are co-sponsoring the 1989 National Conference of State Juvenile Justice Advisory Groups. The agenda for this conference includes presentations on important juvenile justice and delinquency prevention issues including: State practices in the area of juvenile confinement; effective prevention strategies; and, impact issues such as illegal drug use, minorities in the juvenile justice system, missing and exploited children, gangs, and AIDS among adolescents.

Individuals and organizations interested in these issues are invited to attend. The conference will take place at the NUGGET Hotel in Reno, Nevada May 7–10, 1989. For information concerning registration please contact the Conference Coordinator, Marion Mattingly, 8801 Fallen Oak Drive, Bethesda, MD 20817, (301) 469–6580.

Dated: April 11, 1989.

Approved:

Diane M. Munson,

Acting Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 89–9061 Filed 4–14–89; 8:45 am]

BILLING CODE 4410–18–M

Immigration and Naturalization Service

[INS Number: 1129–89]

Immigration and Naturalization Service User Fee Advisory Committee; Meeting

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice of meeting.

Committee Holding Meeting: Immigration and Naturalization Service User Fee Advisory Committee.

Date and Time: June 27, 1989 at 9:30 a.m.

Place: Los Angeles Department of Airports Administration Building, Los Angeles International Airport, One World Way, Los Angeles, CA.

Status: Open. Third meeting of this Advisory Committee.

Purpose: Performance of advisory responsibilities to the Commissioner of the Immigration and Naturalization Service pursuant to section 286(k) of the Immigration and Nationality Act of 1952, as amended, [8 U.S.C. 1356(k)] and the Federal Advisory Committee Act [5 U.S.C. App. 2].

Agenda:

1. Introduction of the Committee members.
2. Discussion of administrative issues.
3. Discussion of activities since last meeting.
4. Discussion of specific concerns and questions of Committee members.
5. Discussion of relevant written statements submitted in advance by members of the public.
6. Scheduling of next meeting.

Public Participation: The meeting is open to the public, but advance notice of attendance is requested to assure adequate seating. Persons planning to attend should notify the Contact Person at least two (2) days prior to the meeting. Members of the public may submit written statements at any time before or after the meeting to the Contact Person for consideration by this Advisory Committee. Only written statements received at least five (5) days prior to the meeting by the Contact Person will be considered for discussion at the meeting.

Contact Person: Sharon L. Isenberg, Program Analyst, Office of the Assistant Commissioner, Inspections, Immigration and Naturalization Service, Room 7123, Chester Arthur Bldg., 425 I Street NW., Washington, DC 20536, Telephone (202) 633–2680.

Dated: April 7, 1989.

Richard E. Norton,

Associate Commissioner, Examinations Immigration and Naturalization Service.

[FR Doc. 89–9021 Filed 4–14–89; 8:45 am]

BILLING CODE 4410–10–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee on Materials and Metallurgy; Meeting

The ACRS Subcommittee on Materials and Metallurgy will hold a meeting on April 27, 1989, Room P–422, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting will be as follows: **Thursday, April 27, 1989—8:30 until the conclusion of business.**

The Subcommittee will discuss the status of the following matters: erosion/corrosion of pipes, hydrogen/water chemistry, zinc addition to primary coolant loop and its effects on materials, decontamination effects on materials, and other related matters.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS Staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS Staff member, Mr. Elpidio Igne (telephone 301/492–8192) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Date: April 10, 1989.

Gary R. Quittschreiber,

Chief, Project Review Branch No. 2.

[FR Doc. 89–9137 Filed 4–14–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–322]

Long Island Lighting Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption to Facility Operating License No. NPF–36 issued to the Long Island Lighting Company (LILCO), the licensee, for the Shoreham Nuclear Power Station (SNPS), located in Suffolk County, New York.

Environmental Assessment

Identification of Proposed Action

The proposed exemption would grant an exemption from the requirements of 10 CFR 50.44(c)(3)(i) to allow the Shoreham reactor to operate for 120 effective full-power days before the containment atmosphere would have to be inerted. By letters dated June 19, 1985 and March 27, 1986, the licensee requested an exemption to operate the Shoreham reactor for 120 effective full-power days before the containment atmosphere would have to be inerted rather than six months after initial criticality. The change as to when the containment atmosphere would be required to be inerted is the proposed action being considered by the staff.

The Need for the Proposed Action

The licensee's June 19, 1985 and March 27, 1986 letters provided technical justification to be allowed to operate the SNPS reactor in OPERATIONAL CONDITION 1 while the containment is uninerted for a period during the initial 120 effective full-power days of core burnup. Granting this exemption would allow access to the containment during the power ascension testing program to perform the required frequent observations during this initial period of plant operation above five percent of full-rated power.

Environmental Impacts of the Proposed Action

The proposed exemption would allow the licensee to operate the SNPS reactor in OPERATIONAL CONDITION 1 while the containment is uninerted for a period during the initial 120 effective full-power days of core burnup. Granting this exemption would allow access to the containment during the power ascension testing program to perform the required frequent observations during this initial period of plant operation. The requested 120 effective full-power days period of non-inerted operation is similar to that allowed by 10 CFR 50.44(c)(3)(i). This regulation was written recognizing the need for frequent containment entries during power ascension testing programs and allows six months from inital criticality before requiring the containment to be inerted. The SNPS achieved initial criticality on February 15, 1985, thus the containment must be inerted whenever the reactor is placed in OPERATIONAL CONDITION 1 and above 15 percent of RATED THERMAL POWER. The licensee has

not been able to complete the SNPS's power ascension program because the protracted emergency planning litigation has precluded operation above five percent of full-rated power. Thus the licensee will need a period of non-inerted containment operation to complete its power ascension program similar to that authorized for other BWR plans during the start-up program. The staff has determined, in a safety evaluation which was issued separately (Safety Evaluation Report, Supplement No. 9), that granting this temporary exemption from compliance with 10 CFR 10.44(c)(3)(i) for containment inerting has no adverse safety significance and will not endanger life or property or the common defense, and is otherwise in the public interest. In addition, the exemption in question would not authorize construction or operation, would not authorize a change in licensed activities nor effect changes in the permitted types or amounts of radiological effluents. The proposed changes do not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that this proposed action would result in no measurable radiological environmental impact. With regard to potential non-radiological impacts, the proposed exemption does not affect plant non-radiological effluents and has no other environmental impact. Therefore, the Commission concludes there are no measurable non-radiological environmental impacts asssociated with the proposed exemption.

Alternatives to the Proposed Action

Since the Commission concluded that there is no measurable environmental impact associated with the proposed exemption, any alternatives with equal or greater environmental impacts need not be evaluated. The principal alternative to the exemption would be to require the licensee to inert the containment within 24 hours after THERMAL POWER is greater than 15 percent of RATED THERMAL POWER, following startup. This would adversely impact the power ascension testing programs by limiting access to the containment for observations while these tests are being conducted during the initial period of plant operation above five percent of full-rated power. It could also have a slightly negative impact on safety because it would tend to restrain the frequency of inspections and observations if abnormal circumstances develop.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement dated October 1977 for the Shoreham Nuclear Power Station.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption. Based upon the environmental assessment, the NRC staff concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this proposed action, see the licensee's letters dated June 19, 1985 and March 27, 1986, and the Safety Evaluation Report, Supplement No. 9, dated December 1985. These documents are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC and at the Shoreham-Wading River Public Library, Route 25A, Shoreham, New York 11786–9697.

Dated at Rockville, Maryland, this 11th day of April 1989.

For The Nuclear Regulatory Commission

Walter Butler,

Director, Project Directorate I–2 Division of Reactor Projects I/II Office of Nuclear Reactor Regulation.

[FR Doc. 89–9095 Filed 4–14–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–341]

Detroit Edison Co.; Wolverine Power Supply Cooperative, Inc. Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–43, issued to the Detroit Edison Company and Wolverine Power Supply Cooperative, Inc. (the licensees), for operation of Fermi–2 located in Monroe County, Michigan.

In accordance with the licensees' application for amendment dated November 14, 1988 the amendment would revise the Technical Specification to resolve Standby Liquid Control System inconsistencies by modifying Action Statements and surveillance requirements wording to more clearly and accurately reflect the system configuration and operability requirements.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By May 17, 1989, the licensees may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–800–325–6000 (in Missouri 1–800–342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Theodore R. Quay: (petitioner's name and telephone number); (date petition was mailed); (plant name); and April 17, 1989. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to John Flynn, Esq., Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan 48226, attorney for Detroit Edison Company.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated November 14, 1988, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, and at the Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Dated at Rockville, Maryland, this 4th day of April.

For the Nuclear Regulatory Commission.

Acting Director, Project Directorate III–1, Division of Reactor Projects—III, IV, V & Special Projects.

[FR Doc. 89–9094 Filed 4–14–89; 8:45 am]

BILLING CODE 7590–01–M

POSTAL RATE COMMISSION

[Docket No. A89–6]

Hoyt, Colorado 80641 (Delores Grosz, Petitioner); Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. 404(b)(5)

Before Commissioners: Janet D. Steiger, Chairman; Patti Birge Tyson, Vice-Chairman; John W. Crutcher; Henry R. Folsom; W.H. "Trey" LeBlanc III.

Issued April 11, 1989.

Docket Number: A89–6.

Name of Affected Post Office: Hoyt, Colorado 80641.

Name(s) of Petitioner(s): Delores Grosz.

Type of Determination: Closing.

Date of Filing of Appeal Papers: April 3, 1989.

Categories of Issues Apparently Raised: 1. Effect on postal services [39 U.S.C. 404(b)(2)(C)].

Other legal issues may be disclosed by the record when it is filed; or, conversely, the determination made by the Postal Service may be found to dispose of one or more of these issues.

In the interest of expedition, in light of the 120-day decision schedule [39 U.S.C. 404(b)(5)], the Commission reserves the right to request of the Postal Service memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request; a copy shall be served on the petitioner. In a brief or motion to dismiss or affirm, the Postal Service may incorporate by reference any such memoranda previously filed.

The Commission orders:

(A) The record in this appeal shall be filed on or before April 18, 1989.

(B) The Secretary shall publish this Notice and Order and Procedural Schedule in the **Federal Register**.

By the Commission.

Charles L. Clapp,

Secretary.

April 3, 1989—Filing of Petition.

April 11, 1989—Notice and Order of Filing of Appeal.

April 28, 1989—Last day of filing of petitions to intervene [*see* 39 CFR 3001.111(b)].

May 8, 1989—Petitioners' Participant Statement or Initial Brief [*see* 39 CFR 3001.115(c) and (b)].

May 30, 1989—Postal Service Answering Brief [*see* 39 CFR 3001.115(c)].

June 14, 1989—Petittioners' Reply Brief should Petitioners choose to file one [*see* 39 CFR 3001.115(d)].

June 21, 1989—Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [*see* 39 CFR 3001.116].

August 1, 1989—Expiration of 120-day decisional schedule [*see* 39 U.S.C. 404(b)(5)].

[FR Doc. 89–9063 Filed 4–14–89; 8:45 am]

BILLING CODE 7715–01–M

[Docket No. A89–7]

New Site, Mississippi 38859 (Boyd Riddle, Petitioner); Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. 404(b)(5)

Issued: April 11, 1989.

Before Commissioners: Janet D. Steiger, Chairman; Patti Birge Tyson, Vice Chairman; John W. Crutcher; Henry R. Folsom; W.H. "Trey" LeBlanc III.

Docket Number: A89–7.

Name of Affected Post Office: New Site, Mississippi 38859.

Name(s) of Petitioner(s): Boyd Riddle.

Type of Determination: Consolidation.

Date of Filing of Appeal Papers: March 31, 1989.

Categories of Issues Apparently Raised: 1. Effect on postal services [39 U.S.C. 404(b)(2)(C)].

2. Effect on the community [39 U.S.C. 404(b)(2)(A)].

Other legal issues may be disclosed by the record when it is filed; or, conversely, the determination made by the Postal Service may be found to dispose of one or more of these issues.

In the interest of expedition, in light of the 120-day decision schedule [39 U.S.C. 404(b)(5)], the Commission reserves the

right to request of the Postal Service memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request; a copy shall be served on the petitioner. In a brief or motion to dismiss or affirm, the Postal Service may incorporate by reference any such memoranda previously filed.

The Commission orders:

(A) The record in this appeal shall be filed on or before April 17, 1989.

(B) The Secretary shall publish this Notice and Order and Procedural Schedule in the Federal Register.

By the Commission.

Charles L. Clapp,

Secretary.

Appendix

March 31, 1989—Filing of Petition.
April 11, 1989—Notice and Order of Filing of Appeal.
April 25, 1989—Last day of filing of petitions to intervene [*see* 39 CFR 3001.111(b)].
May 5, 1989—Petitioner's Participant Statement or Initial Brief [*see* 39 CFR 3001.115 (a) and (b)].
May 25, 1989—Postal Service Answering Brief [*see* 39 CFR 3001.115(c)].
June 9, 1989—Petitioner's Reply Brief should Petitioner choose to file one [*see* 39 CFR 3001.115(d)].
June 16, 1989—Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [*see* 39 CFR 3001.116].
July 29, 1989—Expiration of 120-day decisional schedule [*see* 39 U.S.C. 404(b)(5)].

[FR Doc. 89-9064 Filed 4-14-89; 8:45 am]

BILLING CODE 7715-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-26709; File Nos. SR-Phlx-88-07; SR-Amex-88-10; Sr-CBOE-88-09]

Self-Regulatory Organizations; Philadelphia Stock Exchange, et al.; Order Approving Proposed Rule Changes Relating to the Listing and Trading of Index Participations

I. Introduction

On February 29, April 18, and May 26, 1988, the Philadelphia Stock Exchange, Inc. ("Phlx"), the American Stock Exchange, Inc. ("Amex"), and the Chicago Board Options Exchange, Inc. ("CBOE") (collectively "exchanges"), respectively, submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] proposed rule changes to list for trading market basket products designated as index participations ("IPs").

The proposed rule changes were noticed in Securities Exchange Act Release Nos. 25495 (March 23, 1988), 53 FR 10311; 25664 (May 5, 1988), 53 FR 16805; and 25799 (June 13, 1988), 53 FR 22754. The exchanges subsequently submitted amendments to their proposed rule changes.[3] The Commission received 25 comment letters relating to the proposed rule changes.[4]

II. Background and Description of the Products

A. Terms of the Contracts

An IP is a present interest in the current value of a portfolio of stocks. IPs are of indefinite duration, and entitle holders to cash payments equivalent to a proportionate share of any regular cash dividends paid on the component stocks of the underlying equity portfolio. Investors buying and selling IPs can realize profits or limit losses on their investment by entering into an offsetting sale or purchase of an IP in a closing transaction and thereby receive or make payment of the difference between the cost of the opening and closing transactions. Alternatively, investors purchasing IPs may elect instead to realize profits or limit losses on their investment through exercising a cash-out privilege [5] which is available, depending on the IP, on a daily, quarterly, or a semi-annual basis.

The dates on which IPs purchasers may obtain the full index value upon exercise of the cash-out privilege are designated as cash-out times. Excluding the Phlx's daily cash-out alternative, the cash-out time for each quarter or semi-annual period, depending on the IP, will be determined and made public by each Exchange before the beginning of such period.

The Phlx IP, called the Cash Index Participation ("CIP"), permits holders to exercise the cash-out feature on a daily basis in addition to the designated quarterly cash-out time.[6] A CIP holder that exercises the cash-out feature on any day other than the designated quarterly cash-out time will receive 99.5% of the underlying portfolio's value. the Phlx notes that the .5% differential subtracted from the index value received by such CIP holders is a fee that reflects the substantial benefit to CIP holders of daily cash-out, and that CIP holders may avoid the discount by closing out their positions for cash in the market or by cashing out at a regular quarterly cash-out date.

The Amex product is termed the Equity Index Participation ("EIP"). EIPs, as originally proposed by the Amex, enabled purchasers to exercise a cash-out privilege on a quarterly basis. On October 27, 1988, the Amex submitted an amendment to permit EIP holders to receive either cash or physical delivery of shares of the component stocks of the S&P 500 Index and the Major Market Index under specified circumstances.[7] More specifically, the holder of one or more delivery units [8] that has not chosen to exercise the cash-out privilege has the right to obtain on each delivery time, which coincides with the quarterly cash-out time, the physical delivery of the proportionate number of shares of each stock comprising the underlying index, subject to certain conditions. A delivery fee established by the Amex will be charged to EIP holders taking physical delivery of the component stocks.

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[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1988).

[3] These Amendments have been noticed for public comment in the Federal Register. *See* notes 6, 7, 9, 10, 14, and 17 *infra*.

[4] *See* notes 22-28 and 30-31, *infra* and accompanying text.

[5] *See* discussion on p. 6 *infra*.

[6] The CIP, when first proposed by the Phlx, provided for a quarterly cash-out only. Subsequently, on September 26 and October 11, 1988, the Phlx submited Amendments Nos. 2 and 3, respectively to its proposed rule change. In general, these amendments would permit CIP holders to exercise the cash-out feature on a daily as well as quarterly basis. To exercise the daily cash-out feature an IP holder must submit notice of this exercise by 4:15 p.m. The IP holder would receive a cash payment equal to 99.5% of the index value as of the close of business the following day. The Phlx has tentatively determined to establish the quarterly cash-out time to coincide with the expiration of the leading stock index futures contracts [*i.e.* the opening of trading on the third Friday of March, June, September, and December ("Expiration Friday")]. *See* Securities Exchange Act Release No. 26174 (October 13, 1988), 53 FR 40814.

[7] *See* Securities Exchange Act Release No. 26243 (November 2, 1988), 53 FR 45407.

[8] A delivery unit is defined as the minimum number, as specified by the Amex, of EIPs of a particular class that must be held in an individual account by a holder at the time of exercise of the delivery privilege, or that must be maintained as a short position in an equivalent account by a person who notifies OCC of a desire to make physical delivery of securities to a holder if assigned an exercise. The Amex has tentatively established the delivery unit as 50,000 EIPs per unit for the S&P 500 Index and 25,000 EIPs per unit for the XMI. The Amex believes that permitting physical delivery of units below these levels would be impractical because of the minute number of shares of individual stocks that would be deliverable. If the Amex intends to modify the minimum number of EIPs that constitute a delivery unit, then the exchange must submit a separate proposed rule change for Commission approval.

Under the Amex proposal, exercise notices requesting physical delivery of one or more delivery units will be assigned first, on a random basis, to those short EIP positions that have notified the Options Clearing Corporation ("OCC") of a desire to make physical delivery. If the number of delivery units for which holders have requested physical delivery exceeds the number of units made available for delivery by persons with short EIP positions, then an Amex-designated physical delivery facilitator will assume responsibility for delivering the physical shares with respect to such excess number of units.[9]

The CBOE product, called the Value of Index Participation ("VIP"), differs from both the Phlx CIP and the Amex EIP in that it allows VIP sellers, as well as purchasers, to exercise a cash-out privilege on a semi-annual basis. A person with a short VIP position desiring to exercise the cash-out privilege originally was required to pay a premium of 1% of the index's value. The CBOE eliminated this charge, however, in an amendment filed on November 1, 1988.[10] The Exchange believes that the existence of a cash-out privilege for holders of both long and short positions will cause the price of VIPs to trade more closely to the value of the underlying portfolio because it will allow a hedged short VIP holder an alternative to reversing his position by purchasing the VIP at the current market price and selling the underlying equities.

Notice of exercise of the IP cash-out privilege must be provided by an IP purchaser on or before a time specified and made public by the Exchange on which the IP is traded. The exchanges have determined to establish and make public the cut-off time for the submission of notices of exercise of an IP cash-out privilege before the beginning of each quarterly or semi-annual cash-out time. At the present time, the exchanges have established an exercise cut-off time of the close of trading on the day before the quarterly or semi-annual cash-out time (*i.e.* 4:15 p.m. on the Thursday before the quarterly or semi-annual cash-out time).[11] An exercise notice may be tendered to the OCC only by the OCC clearing member in whose account the IP is carried. Upon exercise of the quarterly or semi-annual cash-out privilege an IP purchaser may obtain at the cash-out time the IP index value based on the opening trades of the portfolio's component stocks on the next day.[12]

Pursuant to the exchanges' proposed rules, each member organization will establish fixed procedures for the allocation of IP exercise notices assigned to a short (or long also in the case of CBOE VIPs) position in IPs in such member organization's customers' accounts. Such allocation shall be made on either a "first-in, first-out" basis, automated random selection basis that has been approved by the exchanges, or on a manual random selection basis. Each member organization will inform its customers in writing of the method it uses to allocate exercise notices to its customers' accounts, explaining its manner of operation and the consequences of that system.

Pursuant to the exchanges' proposed rules, all bids and offers made on the trading floor for IPs will be deemed to be for one unit of trading unless a specified greater number of IPs is expressed. A bid or offer for more than a unit of trading of IPs will be deemed to be for the amount thereof or a smaller number of units of trading of IPs. The unit of trading in IPs shall be 100 IPs unless otherwise designated by the Exchange.[13]

The exchanges have reserved the right, in the event of extreme IP trading inactivity or under exceptional circumstances, to require that purchasers and sellers settle their IP contracts at the closing index value determined by a designated cash-out time, upon one year's prior notice to the public.

B. Portfolios Underlying the Proposed Index Participations

1. Composition, Calculation and Adjustment

The exchanges contemplate trading IPs on a variety of underlying portfolios, most of which are relied upon as well-established and widely-disseminated market indicators or market segment indicators, and some of which are new. The Phlx has designated two underlying portfolios for CIP trading: a broad-based portfolio designated by the Exchange ("Blue Chip" Index) and the Standard & Poors 500 ("S&P" 500) portfolio.[14]

The Blue Chip CIP is an IP based on a price-weighted portfolio composed of 25 highly capitalized listed common stock issues representing primarily industrial corporations, and which is designed to replicate the performance of the Dow Jones Industrial Average ("DJIA"). Each Blue Chip CIP will represent $\frac{1}{100}$ (the multiplier) times the value of the portfolio, and each S&P 500 CIP [15] will represent $\frac{1}{10}$ (the multiplier) times the value of the portfolio. The standard unit of trading in such CIPs will be 100 CIPs, and bids and offers will be expressed in decimals. The Exchange expects to establish a starting Blue Chip CIP portfolio value of approximately 2000, so that each Blue Chip CIP would be priced at approximately $20.00, and each Blue Chip CIP trading unit would be priced at approximately $2,000. The value of the portfolio will be adjusted to account for stock splits, stock dividends, and extraordinary cash dividends. The value of the portfolio will not be adjusted for regular cash dividends paid out to CIP holders. If the character of any stock in the portfolio materially and substantially changes on the account of delisting, merger, acquisition, or otherwise, the Exchange will replace such stock with another stock which possesses similar characteristics so as to retain the integrity and representativeness of the portfolio.

[9] The Amex's Amendment No. 2 to its EIP filing noted that the physical delivery facilitator could deliver shares out of inventory, buy shares at the opening on the cash-out date, or borrow shares. However, in order to ameliorate any concerns regarding the facilitator's advance knowledge of physical delivery unit imbalances, the Amex submitted an additional amendment under which the facilitator may satisfy such imbalances only by delivering component shares purchased at the opening on the cash-out date. This facilitator will be compensated out of proceeds received from shorts who have been assigned exercise notices. Initially, the Amex contemplates designating only one facilitator per EIP class and notes the facilitator may be the specialist unit for that class of EIPs. *See* Securities Exchange Act Release No. 26355 (December 13, 1988), 53 FR 51181.

[10] *See* Securities Exchange Act Release No. 26257 (November 7, 1988), 53 FR 45833. This amendment also changed the cash-out feature from a quarterly to a semi-annual cycle.

[11] If the exchanges intend to modify the exercise cut-off time they must submit separate proposed rule changes for Commission approval pursuant to section 19(b)(2).

[12] A CIP holder exercising the daily cash-out privilege on a day other than the quarterly cash-out time receives the value of the portfolio at the close of the next trading day, less the .5 percent exercise fee described above.

[13] If the exchanges intend to modify the unit of trading from 100 IPs they must submit separate proposed rule changes for Commission approval.

[14] Originally, the Phlx proposed trading a Stock Market CIP that was based on a 100 stock portfolio developed by the Exchange and was designed to track closely with the S&P 500. On August 23, 1988, the Phlx submitted Amendment No. 1 to the filing in which it withdrew its proposed Stock Market CIP and indicated that it would trade a S&P 500 CIP in its place. *See* Securities Exchange Act Release No. 26058 (September 2, 1988), 53 FR 35247.

[15] *See* Securities Exchange Act Release No. 19907 (June 24, 1983), 48 FR 30814 for a detailed description of the S&P 500 Stock Index. As of December 6, 1988, the closing index value for the S&P 500 was 277.58. Thus, each S&P 500 CIP would be priced at $27.75, and each S&P 500 trading unit would be priced at $2,775.

The Amex EIPs will be based on the Major Market Index ("XMI") [16] and the S&P 500.[17] The XMI is a broad-based price-weighted portfolio developed by the Amex, and is comprised of 20 highly capitalized issuers. Each XMI EIP will represent 1/10 (the multiplier) times the portfolio's value,[18] and the standard unit of trading in such EIPs will be 100 EIPs. Bids and offers for EIPs will be quoted in decimals.

The CBOE VIPs are based on the capitalization-weighted CBOE 50 and CBOE 250 portfolios [19] developed and maintained by the Exchange, and the S&P 500 Index, calculated and maintained by Standard and Poor's Corporation. Each CBOE VIP will represent 1/10 (the Index multiplier) times the Index value,[20] and the standard unit of trading will be 100 VIPs. Bids and offers for VIPs will be quoted in fractions of 1/8 of a point.

2. Publication

Publication of the values underlying the IPs will occur at two levels.[21] First, the exchanges will make public the component portfolios they use for calculating the value of their participations. This is necessary to provide market professionals, institutions, and other public investors a basis for relating the value of these participations to their own stock positions, and for maximizing the utility of the participations. The Phlx, Amex, and CBOE currently publicize the means by which they compute values of the portfolios underlying their participations (*i.e.* summation of share prices divided by a specific divisor, times the multiplier).

Second, in addition to the real-time computation of underlying portfolio values that will be the subject of index participation trading, those values will be widely disseminated. Because products related to the portfolios underlying the Amex EIP, the CBOE VIP, and the Phlx S&P 500 CIP previously have been approved for trading, those values are already widely disseminated. Additionally, the Phlx has retained Bridge Data, Inc. to compute and perform all necessary maintenance of the Blue Chip CIP. Pursuant to Phlx Rule 1003B, updated underlying portfolio values will be disseminated and displayed by means of primary market prints reported over the Consolidated Last Sale Reporting System and the facilities of the Options Price Reporting Authority. The value of the underlying portfolios will also be available on broker-dealer interrogation devices to subscribers of the CIPs information.

III. Comments Received

The Commission received 25 comment letters in response to its requests for comments on the Phlx, Amex, and CBOE proposed rule changes. Fifteen of the twenty-five comment letters were submitted on behalf of the Commodity Futures Trading Commission ("CFTC"), the Chicago Board of Trade ("CBT"), or the Chicago Mercantile Exchange ("CME"). These letters expressed the belief that the IPs are futures, and therefore that the Commission lacks jurisdiction to approve the proposed rule changes.[22] In response to these futures industry comment letters the Commission received letters from the Phlx and CBOE, and a comment letter from the Amex, which included opinions of their respective legal counsels, stating that IPs are securities and therefore subject to SEC jurisdiction.[23] Two letters came from the Phlx and Amex that addressed issues related to timing of Commission action on IPs.[24] The Commission also received a letter from the Phlx commenting on Amex Amendment No. 2 to its EIP filing providing for physical delivery,[25] a letter from the Amex responding to this Phlx comment letter,[26] and letters from three investors, two expressing support for immediate approval of CIPs [27] and one suggesting that EIPs are an unnecessary investment tool.[28] In addition, the Commission received a letter from the Investment Company Institute ("ICI") arguing that IPs are investment company shares and thus must receive relief from the Investment Company Act of 1940 [29] before they may be traded on a national securities exchange.[30] Subsequent to the Commission's consideration of the proposed IPs during an open meeting on March 14, 1989, the Commission received a letter on behalf of the ICI arguing that the issuance and trading of IPs create investment companies. In particular, the ICI claimed that the individuals holding long IP positions and short IP positions each constitute an "issuer" under the statutory definition of that term because they are an "organized group of persons." [31]

A. *Futures Industry Letters*

In general, the CFTC, the CBT, and the CME ("futures commentators") argue that the Commission lacks jurisdiction to authorize IP trading through approval of the Exchanges' proposed rule changes because an IP does not constitute a "security" as defined in seciton 3(a)(10) of the Act.[32] In particular, the futures

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[16] *See* Securities Exchange Act Release Nos. 19610 (March 17, 1983), 48 FR 12486; 19709 (April 27, 1983), 48 FR 20179 for a detailed description of the XMI.

[17] The Exchange originally proposed to trade EIPs on the XMI and the Institutional Index ("XII"). On July 21, 1988, however, the Exchange submitted to the Commission Amendment No. 1 to File No. SR-Amex-88-10 to trade EIPs on the S&P 500 rather than on the XII. *See* Securities Exchange Act Release No. 25942 (July 25, 1988), 53 FR 28929.

[18] As of December 6, 1988 the closing index value for the XMI was approximately 423. Thus, each XMI EIP would be priced at $42.30, and each XMI EIP trading unit would be priced at $4,230.

[19] *See* Letter from Jonathan G. Katz, Secretary, SEC to Dr. Paula Tosini, Director, Division of Economic Analysis, CFTC, dated April 22, 1988 for a detailed description of both the underlying CBOE 50 and CBOE 250 portfolios.

[20] As of December 6, 1988 the closing value for the CBOE 250 was approximately 248. Thus, each CBOE 250 VIP would be priced at $24.80, and each CBOE VIP trading unit would be priced at $2,480.

[21] Publication and dissemination of the values of the portfolios underlying IPs will help to ensure the maintenance of a fair and orderly market in the product consistent with the goals of Section 11A(a)(1) of the Act and to reduce the possibility of fraudulent or manipulative trading involving the IPs. *See* 15 U.S.C. 78f(b)(5) (1982).

[22] *See* Letters to Jonathan G. Katz, Secretary, SEC, from Jean A. Webb, Secretary, CFTC (April 29 ("1st CFTC Letter"), June 1, and July 8, 1988); Thomas R. Donovan, President and Chief Executive Officer, CBT (April 20 ("1st CBT Letter"), June 1, July 8, and November 30, 1988); William Brodsky, President and Chief Executive Officer, CME (April 20 ("1st CME Letter"), May 18, and November 29, 1988); Phillip Stern and Jerrold Salzman, Attorneys, Freeman, Freeman & Salzman on behalf of the CME (August 2, November 7 ("5th CME Letter"), and December 1, 1988 and March 2, 1989). *See also* Letter from Jean A. Webb, Secretary, CFTC, to Shirley R. Hollis, Assistant Secretary, SEC, dated December 13, 1988.

[23] *See* note 34 *infra*.

[24] *See* Letters to Jonathan G. Katz, Secretary, SEC, from Nicholas A. Giordano, President, Phlx (June 29, 1988) ("Phlx letter"); Kenneth R. Liebler, President and Chief Operating Officer, Amex (July 27, 1988) ("Amex letter").

[25] *See* Letter from Nicholas A. Giordano, President, Phlx to Jonathan G. Katz, Secretary, SEC, dated November 23, 1988.

[26] *See* Letter from Gordon L. Nash, Senior Executive Vice President, Legal and Regulatory Affairs, Amex to Jonathan G. Katz, Secretary, SEC, dated February 10, 1989.

[27] *See* Letter from Dennis Weidenbenner to Richard G. Ketchum, Director, Division of Market Regulation, SEC, dated September 29, 1988; Letter from William A. Dodd, Jr. to David Ruder, Chairman, SEC, dated February 24, 1989.

[28] *See* Letter from K. Thomas Shipley, Executive Vice President, Charter Investment Group, Inc., to David S. Ruder, Chairman, SEC, dated March 29, 1989.

[29] 15 U.S.C. 80a-1 through 80a-52 (1982).

[30] *See* Letter from Matthew P. Fink, ICI, to Richard G. Ketchum, Director, Division of Market Regulation, SEC, dated December 19, 1988.

[31] *See* Letter from David M. Miles, Attorney, Fried, Frank, Harris, Shriver & Jacobson on behalf of the ICI, to David S. Ruder *et al.*, Chairman, SEC, dated March 31, 1989. The Commission, in its discretion, determined to consider this comment. 17 CFR 202.6(b).

[32] 15 U.S.C. 78(c)(1)(j) (1982).

commentators argue that the economic function and purpose of IPs are characteristic of stock index futures rather than stock or index options, and that IPs are therefore subject to the exclusive jurisdiction of the CFTC pursuant to section 2(a)(1)(B) of the Commodity Exchange Act ("CEA").

The futures commentators suggest several reasons to categorize IPs as stock index futures. First, they argue that both the purchaser and seller of an IP contract have entered into a transaction that may be cashed out at a future date at a price based upon the difference between the price established at the initiation of the contract and some undetermined future price. Second, with the exception of the Amex EIP, the IP contract provides for cash settlement only. Third, while an IP long is entitled to hold his position indefinitely, they argue that essentially the contract has a quarterly expiration—identical to the cycle now applicable for similar futures contracts—due to the quarterly cash-out feature. The futures commentators suggest that this feature is synonymous with an "undated futures market contract." They suggest further that the outcome of effective competition will be that an IP long actually will pay a commission to "roll over" his position, at the time he enters into an IP contract, in the form of higher IP prices. Fourth, there is not apparent option premium paid by an IP long.

The CME, specifically, suggests that, although IPs include two features that may not be immediately recognized as standard features of futures contracts, those features serve the economic equivalent of futures characteristics.[33] First, the short will be required to pay to the long cash payments equivalent to a proportionate share of any regular cash dividends paid on the component stocks of the underlying index. The CME suggests that the concept of a cash payment from the short to the long, related to measured or theoretical shrinkages in the value of the underlying product, is a feature also found in futures contracts. Second, IPs afford longs the right to select the time at which shorts will be compelled to make cash delivery. The CME notes that this is a standard feature of most physical commodity based futures contracts, and that a futures contract holder generally has a far wider range of options (*e.g.*, the ability to control the exact date, time, and place of the delivery of the commodity to the long).

The Phlx, CBOE, and Amex (the "exchanges") argue that IPs should be viewed as securities as defined in section 3(a)(10) of the Act.[34] In general, the Phlx and CBOE base their argument on *SEC* v. *C.M. Joiner Leasing Corp.*[35] in which the Supreme Court emphasized the economic function of instruments in determining whether they constituted securities.[36] Specifically, the Phlx argues that although IPs do not possess all of the familiar characteristics of common stock as described in *Landreth Timber Co.* v. *Landreth*[37] an IP does possess most of the characteristics of stock, and purchases and sales of an IP are intended to replicate the economic substance of purchases and sales of an equivalent amount of the underlying stocks.[38]

First, the exchanges argue that IPs entitle holders to receive on a quarterly basis cash payments equivalent to the regular cash dividends declared on the component stocks of the underlying index. Second, the Phlx argues that an IP purchaser will have the ability to pledge or hypothecate his interest in the IP. For example, as a typical provision of customer agreements with a brokerage firm, an investor normally will pledge or hypothecate his interest in the IP, including profits and dividends, as security to the broker for any indebtedness arising in connection with his account or any other indebtedness to the broker. Third, the Phlx argues that IPs will be freely transferable in exchange transactions; thus, IPs will be negotiable in the same sense as exchange-traded equities and equity and non-equity securities options. Fourth, the exchanges argue that IPs will have the capacity to appreciate in value as the securities comprising the underlying portfolio increase in value.

In addition, the Phlx and CBOE assert that, although the purchase and sale of an IP does not constitute the purchase and sale of the underlying shares of stock, the economic substance of transactions in the IP leads to the conclusion that the IP should be viewed as stock for purposes of the definition of security. An IP purchaser or seller will have similar risks and obligations as a person long or short stock. The Phlx notes further that, to the extent these risks and obligations differ from those associated with stock, they resemble a stock index option because of the availability of a cash-out privilege, and because IPs would be issued by the OCC rather than a corporation. Moreover, the Phlx argues that the cash settlement feature of IPs should not lead to the conclusion that IPs are more akin to stock index futures than to securities as defined under section 3(a)(10) of the Act. The Phlx suggests that in amending the definition of the term "security" to include "any put, call, straddle, option, or privilege on any security * * * or group or index of securities (including any interest therein or based on the value thereof) * * *" Congress explicitly recognized that products which function economically as securities are themselves securities, although they are cash-settled based on the value of underlying securities or indexes.

The Phlx and CBOE argue that IPs are securities because, in addition to possessing the characteristics of stock, IPs may be classified as "an instrument commonly known as a security." In making this determination the Phlx and CBOE rely on the majority view in *Landreth* that the reasonable expectation of investors that they are purchasing securities subject to the securities laws is of particular significance in determining whether an instrument bearing only some of the traditional characteristics of a type of security enumerated in Section 3(a)(10) is a security.[39]

The exchanges suggest that, even if an IP may be considered a commodity under the CEA definition, it is not a "contract of sale for future delivery" for purposes of that Act. In this regard, the exchanges argue that although IPs may possess certain elements characteristic of futures contracts [*e.g.*, standardized terms and the ability of investors to realize profits or limit losses through entry into offsetting sales or purchases and payment of the difference between the purchase (sale) price and the price at which the closing transaction is effected] they lack the most significant

[33] *See* 1st CME Letter at 2–3.

[34] *See generally* Letter from William W. Uchimoto, Acting General Counsel, Phlx, to Richard G. Ketchum, Director, Market Regulation, SEC, dated May 24, 1988, enclosing opinion of Cadwalader, Wickersham and Taft, Phlx legal counsel, regarding SEC jurisdiction over IPs ("Cadwalader Letter"); Letter from Nancy R. Crossman, First Vice President, Legal Services, CBOE to Howard Kramer, Assistant Director, Division of Market Regulation, SEC, dated September 9, 1988, enclosing opinion of Gardner, Carton and Douglas, CBOE legal counsel, regarding SEC jurisdiction over IPs; Letter from Edmund R. Schroeder, Attorney, Lord Day & Lord, Barrett Smith, Amex legal counsel, to Johathan G. Katz, Secretary, SEC, dated January 13, 1989.

[35] 320 U.S. 344 (1943).

[36] *Joiner Leasing Corp*, 320 U.S. at 350–51 (1943). The Amex argues that an IP is a security because it is: (1) a call or option on any security or group or index of securities; (2) a certificate of interest or participation in stock; and (3) a right to purchase stock.

[37] 471 U.S. 681, 686–87 (1985). *See* discussion on pp. 28–29 *infra*.

[38] *See* Cadwalader letter, *supra* note 34, at 5.

[39] *Infra* note 46.

element for CEA purposes—the element of futurity.

The exchanges assert that, unlike stock index futures contracts, a purchase or sale of an IP does not entail a commitment by an investor to buy or sell the value of the underlying index at some time in the future. The exchanges argue that a purchase or sale of the IP involves an actual purchase or sale of the current value of the underlying index, similar to an actual transfer of ownership of the underlying stocks.[40]

In addition, the exchanges note that IPs have other characteristics that differ from futures contracts. First, unlike futures contracts that are listed for trading in different contract months, IPs have a perpetual existence with no fixed expiration date. Second, the IP gives the purchaser a cash-out privilege and the right to receive on a quarterly basis cash payments equivalent to a proportionate share of any regular cash dividends paid on the component stocks of the underlying portfolio. Futures, on the other hand, require settlement upon expiration of the contract and do not grant the right to receive payment of dividends. Third, IPs are less highly leveraged than stock index futures because their proposed margin requirement is 50% of the IP value. In addition, the exchanges note that the IP margin represents a down payment on the purchase price, rather than earnest money or a performance bond, which is the function served by the much lower levels of margin applicable to stock index futures contracts.

B. Proprietary and Other Concerns

In two comment letters regarding Amex's proposed trading of EIPs, the Phlx alleges that the Amex appropriated the CIP design to create the EIP. The Amex filed its EIP proposal with the Commission shortly after the Phlx, and its original EIP design was virtually identical to the CIP design. The Phlx notes that it has expended a great deal of time, effort, and expense in designing and submitting this new product to the Commission for approval. For example, significant staff time and outside legal counsel fees have been spent in preparing the CIP to be traded. The Phlx believes that allowing the Amex to begin trading an identical product at the initiation of CIP trading would undercut the Phlx's efforts to develop new and innovative products such as CIPs.

[40] The exchanges note that when an IP is purchased 100% of the instrument's value must be paid. In this regard, even if an IP were margined, an IP purchaser would have to contribute 50% of the transaction's value and convince a lender to loan the remaining 50%.

Further, the Phlx suggests that its CIP product constitutes protectable intellectual or creative work of pecuniary value and is therefore protected under common law principles and statutory law.[41] The Phlx argues both that a vested property right arises with respect to its CIP and that the Amex has infringed its CIP copyright by appropriating entire provisions constituting the vast preponderance of the Phlx's CIP contract specifications and trading rules and presenting them as Amex rules.

For these reasons, the Phlx argues that approval of the Amex's EIP proposal would be inconsistent with section 6(b)(5), section 6(b)(8), and section 11A(a)(1)(c)(ii) of the Act. The Phlx believes that, at the least, it should be provided a 12 to 18 month head start in the introduction of its IP product. In addition to the proprietary product comments, the Phlx argues that the Amex proposal is deficient in discussing the side-by-side trading concerns that could arise from EIP trading.[42] The Phlx suggests that, because Amex proposes to trade EIPs on the Amex's MMI, a portfolio upon which Amex currently lists and trades options, there exists the potential for significant time and place advantages and concomitant inside market information, as well as possible conflict of interest and manipulation concerns.

[41] *See, e.g.*, International News Service v. Associated Press, 248 U.S. 215 (1918); Standard & Poor's Corp. v. Commodity Exchange, Inc., 683 F.2d 704 (2d Cir. 1982); Board of Trade of the City of *Chicago* v. *Dow Jones & Co.*, 98 Ill.2d 109, 456 N.E.2d 84 (1983).

[42] The Phlx notes that the Amex proposes to trade on EIP on the XMI in addition to the XMI index option currently traded on the Amex floor. The Phlx alleges that the trading of an XMI EIP and XMI option should be prohibited because of informational advantages and potential manipulative schemes that could occur as a result of trading these two products on the same floor, side-by-side. The Commission previously has noted that the side-by-side trading of stocks and options of those stocks, while raising regulatory concerns, may be permitted provided adequate audit trail, surveillance information and regulatory safeguards are in place. The Commission has determined that any side-by-side trading concerns (*e.g.*, informational advantages and potential manipulative schemes) are not present with regard to Amex's EIPs for several reasons. First, the Amex will not be trading an individual stock and an option on that individual stock side-by-side. Instead, the Amex will be trading an index option and the equivalent of a portfolio of stocks on its floor. Second, the 20 stocks that comprise the XMI, and therefore directly determine the index's value, have a primary market on the New York Stock Exchange ("NYSE") rather than the Amex. Consequently, any informational advantages associated with trading and XMI EIP on the Amex are minimal. Finally, the Commission is satisfied that existing audit trail data, surveillance information and regulatory safeguards are sufficient to allay any side-by-side trading concerns.

In response to Phlx's comments regarding Amex's EIPs proposal the Amex submitted a comment letter outlining four major rebuttals to the Phlx letter.[43] First, the Amex suggests that the Commission lacks the authority to adjudicate Phlx's property claims. In this regard, the Amex notes that there is no evidence that Congress intended to provide the Commission with the authority to adjudicate property interests among competing parties because Congress has enacted an elaborate statutory framework for the establishment, preservation, and protection of intellectual or creative works and established specific federal agencies (*e.g.*, the U.S. Patent and Trademark Office and U.S. Copyright Office) to administer and enforce these laws. The Amex further notes that the Act provides, neither expressly nor implicitly, that competing property claims among self-regulatory organizations ("SROs") is a proper area of Commission consideration in determining whether to approve specific rule proposals.

Second, the Amex suggests that a section 19(b) proceeding is inappropriate for adjudicating property rights because such a proceeding would involve the Commission in an exhaustive factual investigation including, but not limited to, a determination of which exchange actually developed the product. The Amex notes that it is prepared to document the fact that it has been actively working for several years on the development of a market basket security and has expended extensive time and resources in so doing.

Third, the Amex suggests that the Phlx CIP is legally protected by neither statutory nor common law principles. The Amex asserts that such a trading instrument is a concept, and thus an idea that can not be protected under federal statutory law. The Amex suggests that because it does not seek to utilize any underlying portfolio designed, calculated and disseminated by Phlx as a basis for EIPs trading, and because none of the cases cited in the Phlx letter suggested that duplication or imitation of the idea or the concept on which a commercial enterprise is based would constitute a misappropriation, the Amex has not misappropriated the Phlx product.

Fourth, the Amex suggests that the "fair competition" mandate of section 11A(a)(C)(ii) of the Act does not authorize the Commission to grant exclusive franchises. The Amex notes that the cases cited by Phlx in support of

[43] *Supra* note 24.

its proprietary rights theory recognized that the freedom to imitate and duplicate is of vital importance in a free market economy. In addition, the Amex, citing the experiences of the options markets,[44] argues that Phlx's contention that innovation and commitment to the development of new products will be stifled unless SROs are provided some protected property interest in ideas filed with Commission is simply erroneous.

IV. Discussion

After careful consideration of the comments received, applicable statutory provisions, and relevant judicial and administrative decisions, the Commission concludes that IPs are securities within the definition of that term in the Act and are not contracts of sale for future delivery, and that therefore such products are subject to the jurisdiction of the Commission. In addition, the Commission concludes that the Phlx should not be provided either exclusive trading privileges over IPs or the opportunity to commence IPs trading in advance of other exchanges.

For these reasons and for additional reasons set forth below, the Commission finds that the proposed rule changes relating to the listing and trading of IPs are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, in general, and the requirements or Section 6 and the rules and regulations thereunder, in particular.

A. Jurisdiction

IPs confer the present right to receive the current value of a portfolio of stocks, are of indefinite duration, and entitle holders to payments equivalent to regular cash dividends paid on the underlying stocks. For the reasons set forth below, the Commission concludes that IPs are securities as defined in the Act. Further, the Commission concludes that IPs are not futures contracts subject to regulation under the CEA, and that regulation of IPs as securities is consistent with the purposes underlying both the Act and the CEA.

1. IPs are Securities

The Commission concludes that each of the proposed IP products is a security within the definition of that term under section 3(a)(1) of the Act. Congress intended that the term "security" be interpreted broadly, and the Supreme Court has, on several occasions, observed that the definition of the term security "is quite broad * * * and includes both instruments whose names alone carry well-settled meaning, as well as instruments of 'more variable character' * * *."[45] It is, thus, well settled that the term "security" is to be interpreted flexibly to encompass new instruments that are similar to, or have the characteristics of, instruments already recognized as securities. In particular, if "economic reality" suggests that such an instrument has the characteristics of instruments that clearly are securities, then it should be defined as a security, even if the instrument does not fit explicitly within the Act's enumeration of specific instruments that constitute securities.[46] Indeed, in a world of rapid development of new financial instruments, it cannot be expected that Congress would have identified the exact form of all instruments that constitute securities.[47]

IPs possess the key characteristics of stock. In *Landreth Timber Co.* v. *Landreth*,[48] the Supreme Court's most recent decision addressing the definition of the term "security," the Court described five characteristic features of stock as: (1) The right to receive dividends; (2) negotiability; (3) the ability to be pledged or hypothecated; (4) the capacity to appreciate in value; and (5) the conferring of voting rights in proportion to the number of shares owned.[49] IPs have all of these characteristics, except voting rights, and have other characteristics of stock as well.

With regard to the *Landreth* characteristics: (1) IP purchasers will be entitled to receive on a quarterly basis cash payments equivalent to a proportionate share of any regular cash dividends paid on the component stocks of the underlying portfolio; (2) because IPs will be freely transferable in exchange transactions, such instruments will be negotiable in the same sense as exchange-traded stock; (3) IP purchasers also will have the ability to pledge or hypothecate their IP interests;[50] and (4) IPs will have the capacity to appreciate in value as the underlying components appreciate in value.[51] The only characteristic cited in *Landreth* that IPs do not provide are voting rights in the stocks comprising the Index. This difference is not, by itself, determinative inasmuch as there are many types of securities, including some types of stock, that do not possess voting rights. For example, preferred stock generally possesses either limited or no voting power.[52] Accordingly, the absence of voting rights does not preclude the characterization of IPs as a security.

IPs have two other important characteristics normally associated with stock. First, IPs do not expire. An investor can hold them for an indeterminate time, just as an investor

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[44] The Amex, referring to several Commission releases, notes that the development of new options products has consistently been determined by the Commission not to provide any claim to exclusive trading rights, regardless of which SRO was responsible for initiating the design thereof, for expending funds, time and resources to promote the product, or being the first to file with the Commission.

[45] *Landreth*, 471 U.S. at 686 (1985) [quoting *Marine Bank*, 455 U.S. at 556 (1982); *SEC* v. *C.M. Joiner Leasing Corp.*, 320 U.S. 344, 351 (1943)].

[46] *Landreth* 471 U.S. at 694 (1985); *Tcherepnin* v. *Knight*, 389 U.S. 332, 336 (1967). Section 3(a)(10), 15 U.S.C. 78(a)(10) (1982), defines the term "security" as including: any note, stock, treasury stock, bond, debenture, certificate of interest or participation in any profit-sharing agreement or in any oil, gas, or other mineral royalty or lease, any collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit, for a security, any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities (including any interest therein or based on the value thereof), or any put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency, or in general, any instrument commonly known as a "security"; or any certificate of interest or participation in, temporary or interim certificate for, receipt for, or warrant or right to subscribe to or purchase, any of the foregoing; but shall not include currency or any note, draft, bill of exchange, or banker's acceptance which has a maturity at the time of issuance of not exceeding nine months, exclusive of days of grace, or any renewal thereof the maturity of which is likewise limited.

The Commission notes that the definitions of the term "security" in section 3(a)(10) of the Act and section 2(1) of the Securities Act of 1933 ("Securities Act") are virtually identical and have been treated as such by the Supreme Court in decisions dealing with the scope of the term. *See, e.g., Marine Bank*, 455 U.S. at 555 n. 3 (1982); *United Housing Foundation, Inc.* v. *Foreman*, 421 U.S. 837, 847 n. 12 (1975).

[47] While the Commission, in its analysis of IPs has focused primarily on the portions of the definition discussed in the text, there may be additional bases for concluding that IPs are securities. For example, an IP can be analogized to a receipt for the interests in the securities upon which it is based or to a certificate of deposit for a security. In addition, an analysis of IPs as investment contracts also supports the conclusion that they are securities.

[48] 471 U.S. 681 (1985).

[49] *Id.* at 686–87.

[50] A customer's agreement with his brokerage firm typically provides that an investor normally will pledge his interest in a security, including profits and dividends, as collateral to the broker for any indebtedness arising in connection with his account or any other indebtedness to the broker. In contrast, futures are executory contracts which may not be pledged, except regarding rights to contingent cash payments required by the futures contract.

[51] In addition, insofar as the Amex EIP is concerned, the purchaser or holder of the EIP has the right to receive physical delivery of shares of the component stocks of the Index if he exercises the delivery privilege regarding a sufficient number of EIPs.

[52] As the Court noted in *Landreth*, "various types of preferred stocks may have different characteristics and still be covered by the Acts." *Landreth*, 471 U.S. at 687, n.2 (1985).

may retain a portfolio of stock indefintely. Second, purchase requirements and margin treatment for IPs are analogous to stock purchase and margin requirements. As with stock, an IP purchaser pays the full purchase price for his investment at the time of purchase. The IP purchase may be financed by borrowing up to 50% of the IP purchase price just as a stock purchaser may borrow up to 50% of the stock purchase price. Thus, a margin transaction in IPs includes an actual borrowing with the full purchase price then passed through to the IP seller. Accordingly, since IPs so closely resemble a portfolio of stock they should be included within the definition of stock in section 3(a)(10).

IPs also fall within the term "certificate of interest or participation in" stock. IPs allow investors to replicate a purchase of a portfolio of securities because the value and benefits of IP ownership track the value and benefits of the stocks underlying the portfolio. In addition, IPs are expressly termed "participations." [53]

Although IP transactions will be reflected by book entries rather than by the transfer of paper certificates, the absence of such certificates does not remove them from the term "certificate." [54] The system for IP transfer is similar to the immobilized depository system used in connection with modern day securities transfers, which likewise do not require a formal certificate.[55]

In addition to the fact that IPs fit within several of the more specific terms enumerated in section 3(a)(10), it also is clear that the "economic substance" of an IP [56] is essentially indistinguishable from the economic substance of the more specific instruments that are defined as securities by the statute. An investor who owns an IP will own an instrument having the same economic substance as a portfolio of stocks. The financial returns on the IP will be substantially identical to the returns from holding the underlying portfolio: capital gains or losses will be directly related to the gains or losses from the portfolio's stocks; cash payments made quarterly to the IP holder will consist of an amount equivalent to the regular cash dividends paid by the issuers whose securities comprise the portfolio; and margining treatment for the IP purchasers and sellers is identical to stock margin requirements. Thus, because the "economic substance" of the purchase of an IP is equivalent to the purchase of a portfolio of stock, and the attributes of IPs are those commonly associated with securities, an IP constitutes "an instrument commonly known as a security."

To the extent certain IP characteristics differ somewhat from the characteristics of stock, they resemble characteristics commonly found in rights to purchase or puts or calls on a security or index of securities—interests specifically denominated as securities by the Act.[57] In this regard, the cash-out and physical delivery features of IPs are the equivalent of a put or call right that accompanies the portfolio of stock represented by the IP, much like "buy-sell" agreements for stocks.[58] In particular, the periodic cash-out feature merely creates a right similar to that commonly found in stock transactions where, at specified times, one party to a transaction has a right to purchase or sell a security according to a formula price that might be determined on the basis of book value, and appraisal, or a formula related to market value (whereas the IP right is related to the price of a specified index of securities).[59]

These additional attributes, like the other features of IPs, cause the IP to fall within the instruments included within the definition of the term "security" in section 3(a)(10) of the Act.[60] Accordingly, for all of the above reasons, an IP is a security as defined in the Act.

2. IPs are not Futures

Futures commentators argue that the Commission lacks jurisdiction to authorize the trading of IPs on securities exchanges because IPs constitute stock index futures subject to the exclusive jurisdiction of the CFTC.[61] The Commission disagrees with the futures commentators's suggestion that IPs constitute futures contracts.

The term "futures contract" is not defined in the CEA of the CFTC's regulations. While characterization of the term "future" requires an examination of all the surrounding circumstances, futures contracts generally are: (1) Standardized contracts imposing a bilateral obligation for the purchase or sale of commodities at a specific price that provide for future, as opposed to immediate, delivery on a specific date; (2) directly or indirectly offered to the general public; (3) secured by earnest money or "margin;" (4) entered into primarily for the purpose of assuming or shifting risk as opposed to transferring ownership of commodities; and (5) generally extinguished by executing off-setting contracts prior to the date on which delivery is called for by acceptance of a cash payment representing the difference in price between the initial and off-setting transactions.[62]

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[53] While the name of an instrument is not by itself dispositive in determining whether the instrument is included within the statutory definition of the term "security," the name is one factor taken into consideration. *Landreth*, 471 U.S. at 686 (1985); *United Housing Foundation* v. *Foreman*, 421 U.S. 837, 850 (1975).

[54] L. Loss & J. Seligman, II *Securities Regulation* 597, 997–98 n.286 (3d ed. 1989).

[55] The absence of a certificated instrument does not alter the characterization of an instrument as a security. In this regard, it is noteworthy that, under relevant state commercial laws, the definition of the term "investment security" does not turn on whether investors can obtain certificated instruments to evidence their ownership interests. *See, e.g.*, Del. Code Ann. tit. 6 § 8–102(1)(c) (1988) [Uniform Commercial Code § 8–102(1)(c)]. Under state commercial laws in effect in at least 35 jurisdictions, the term "investment securities" specifically includes "uncertificated securities," transfers of which are registered upon books maintained for that purpose by or on behalf of the issuer. *See, e.g.*, Del. Code Ann. tit. 6 § 8–102(1)(b) (1988); Ill. Ann. Stat. tit. 26 § 8–102(a)(b) (1988); Consolidated Laws of N.Y. Ann. Book 62½ § 8–102(1)(b) (1989). OCC will issue all CIPs, EIPs, and VIPs, and will maintain books for registering transfers of the same.

In addition, other investments routinely are issued or held in book-entry form. Several types of securities commonly trade without any physical, negotiable certificates evidencing ownership interests. For example, U.S. Treasury Bills, Bonds, and Notes are issued exclusively in book-entry form through Federal Reserve Banks. Moreover, numerous states have issued debt securities that restrict significantly an investor's ability to obtain negotiable certificates. *See* Securities and Exchange Commission, 53rd Annual Report 35 (1987); 51st Annual Report 25, 120 (1985); Securities Exchange Act Release No. 22168 (June 25, 1985), 50 FR 27078.

[56] The Court has on several occasions held that "in searching for the meaning and the scope of the word 'security' in the Act[s], form should be disregarded for substance and the emphasis should be on economic reality." *See, e.g., Tcherepnin*, 389 U.S. at 336 (1967).

[57] The futures commentators suggest that IPs are dissimilar to index options because there is no apparent premium paid by an IP long. In this regard, while IPs contain some characteristics of stock index options (*e.g.*, the issuance and clearance and settlement features of IPs are analogous to those of stock index options), the Commission believes that IPs predominantly have the attributes of a portfolio of common stock.

[58] *See, e.g.*, D. Gladstone, *Venture Capital Handbook* 129–30, 237 (1983); *Arley Merchandise Corp.*, [1984–1988 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 77,878.

[59] Moreover, the addition of a periodic "buy-sell" or "put-call" right does not transform a security subject to such a right into a future; nor does it transform a portfolio of stock subject to such a right into a future; and it does not transform an IP into a future.

[60] *See* 15 U.S.C. 77b(1) and 78c(a)(10 (1982).

[61] *See* Section 2(a)(1)(B) of the CEA.

[62] Gilberg, Regulation of New Financial Instruments Under the Federal Securities and Commodities Laws, 39 *Vand. L. Rev.* 1599, 1606–08 (1986). *See* Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Curran, 456 U.S. 353 (1982); CFTC v. Co Petro

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Not all of these characteristics are equally significant in determining whether an instrument is a future. In particular, the phrase that most commonly appears in the CEA is "contracts of sale of a commodity for *future* delivery."[63] The CEA's emphasis on the futurity of the contracts subject to its regulation, the common meaning inherent in the term "futures" contract, and the fact that case law that has sought to define the term "futures contract" has relied extensively on the presence of future pricing (or delivery),[64] all suggest strongly that if a contract lacks the element of futurity it lacks the central distinguishing characteristic of a futures contract.

Since futurity is essential to a futures contract, and no element of futurity exists in an IP contract, an IP is not a futures contract. A stock index futures contract contains an element of futurity because the contract is the obligation to pay for or receive the value of the index at a predetermined date in the future. In stark contrast, however, an IP contract represents the *present* obligation to pay or right to receive the *current* value of an underlying portfolio of securities. In this respect, an IP is substantially the same as a transfer of a portfolio of securities that also gives rise to the *present* obligation to pay or right to receive the *current* value of the underlying portfolio of securities. Whereas the price of the IP is determined at the date of purchase, a futures contract is contractually defined by reference to a price that must be paid or received on a specific date in the future.[65]

In addition to lacking the element of futurity, IPs do not share with futures the element of *bilateral* obligation to receive or to pay the value of the index at a specified date in the future. Once the purchaser of the IP has made full payment for the contract the purchaser has no continuing obligations,[66] only rights. The purchaser has the right to sell out the contract at any time, the right to hypothecate the contract, and the right to "cash out" the contract at pre-set periodic dates.[67] The obligation of an IP contract to make regular cash dividend equivalent payments falls unilaterally on the seller. The other obligation of an IP contract—to pay the present market price of the IP when the other side cashes out—is also unilateral.[68] More importantly, the IP cash-out obligation is fundamentally different from the obligation inherent in a futures contract because the IP obligation is contingent upon exercise of the cash-out privilege. Indeed, unless the privilege is exercised, the obligation is perpetual until the holder of the obligation extinguishes its IP position. No futures contract has this characteristic.

As noted previously, in addition to the primary elements of futurity and bilateral obligation, several other characteristics have been used to determine the existence of futures contracts.[69] In particular, the characteristics of standardization and offset provide little meaningful assistance in determining whether an instrument is a futures contract rather than a security. Other markets, such as stock options markets, regularly offer standardized contracts to the general public without having those contracts considered "futures contracts." [70] The fact that IPs are standardized and offered to the public neither adds to nor detracts from the Commission's conclusion that IPs are not futures. Similarly, the offset characteristics of IPs and stock options are identical. Specifically, as in the case of options, the sale of an IP with the same terms as the one purchased, or the purchase of an IP with the same terms as the one sold, will extinguish the previously established IP position. The availability of a secondary market to offset an IP position thus fails to distinguish IPs from other securities that are not futures and provides no support for the categorization of IPs as futures.

The requirement that futures contracts generally be secured by earnest money margin further differentiates IPs from futures contracts. Margining practices for IPs and futures are dramatically different. As noted above, as with stock, an IP purchaser pays the full purchase price for the IP investment at the time of purchase. Margin treatment for IPs will be analogous to stock margin requirements. The investor is required to pay the full purchase price of the IP at the time of purchase, but may borrow up to 50% to pay for the purchase. Thus, IP margins regulate credit. This is entirely unlike a futures transaction in which margin acts as a "good faith" deposit to ensure that the parties will meet their contractual obligations in the future.[71] Accordingly, the "margin" element of the definition of futures suggests that IPs are securities, not futures contracts.

The CME agrues that, while an IP long position is entitled to be held indefinitely, the quarterly cash-out feature creates a quarterly expiration identical to the cycle now applicable for similar futures contracts. The CME asserts that this feature is synonymous with an "undated futures market contract." [72] The CME asserts further

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Marketing Group, Inc., 680 F.2d 573 (9th Cir. 1982); CFTC v. National Coal Exch., Inc., [1980–1982 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 21,424 (W.D. Tenn. 1982); *In re* First Nat'l Monetary Corp. [1982–1984 Transfer Binder] Comm. Fut. L. Rep. (CCH ¶ 21,707 (CFTC 1983); *In re* Stovall [1977–1980 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 20,941 (CFTC 1979); Advance Notice of Proposed Rulemaking (Regulation of Hybrid and Related Instruments), 52 FR 47022 (December 11, 1987) at 47023.

[63] (emphasis supplied). I P.M. Johnson and T.L. Hazen, *Commodities Regulation*, § 1.03 at 9 (3d ed. 1989).

[64] *See* note 62, *supra*.

[65] The periodic cash-out feature of an IP does not cause the value of the IP ever to be defined on the basis of any price other than a *current* price, whereas the value of a future is always defined with reference to the expectation of the future price at the delivery date.

[66] If the IP purchaser has bought on margin, the purchaser may have a continuing margin obligation, but that obligation is to the lender, not to the IP seller. *See* note 40, *supra*.

[67] The Commission believes that the cash settlement feature of an IP does not support the futures commentators' argument that in substance an IP is a stock index future. In the 1982 amendments to the definition of the term "security" contained in both the Securities Act and the Act, Congress explicitly recognized that products designed to have the economic substance of securities are themselves securities, even though settled in cash on the basis of the value of an underlying index.

[68] The unilateral obligation falls only on the seller of a CIP or EIP, and on both parties with a VIP. The VIP obligations for the seller and purchaser are not bilateral in that each is discretionary because it is dependent on the exercise of the right imposing that obligation.

[69] *Supra* note 62 and accompanying text.

[70] As another example, insurance contracts also are standardized, offered to the public, and can rely on the occurrence of future events, but are not considered "futures contracts."

[71] *See generally* Figlewski, Margins and Market Integrity: Margin Setting for Stock Index Futures and Options, 4 *J. Futures Markets* 385 (1984). As recently explained in a Congressional report: Futures margins do not regulate credit, since no credit is granted on futures contracts. Futures margins constitute a (partial) guarantee that both parties will honor their financial obligations and thus function as a kind of performance bond. Moreover, futures margins, unlike securities margins, must be posted daily (sometimes intra-daily) to cover all daily losses on futures contracts. Report on the Regulation of Futures Margins, Comm. Print 100–6 (Aug. 1988) at 1, 8.

The futures commentators have argued that securities-style margining is fundamentally different from futures-style margining, and, for the reasons set forth by those commentators, the Commission agrees that IPs margins do not have the "earnest money" characteristic of futures contracts. *See, e.g.*, Testimony of William F. Brodsky, President, CME Before the House Subcommittee on Domestic Monetary Policy of the Committee on Banking, Finance and Urban Affairs (May 25, 1988) at 2–4; Statement of Karsten Mahlmann, Chairman, CBT before the House Domestic Monetary Policy Subcommittee of the Committee on Banking, Finance and Urban Affairs (May 25, 1988) at 34; Notice of Petition for Rulemaking (Domestic Exchange-Traded Commodity Options; Margins)S. 54 FR 11233 (March 17, 1989).

[72] *See, e.g.*, 1st CME Letter at 2 [citing Gehr, Undated Futures Markets, 8 *J. Futures Markets*, 89 (1988)].

that the outcome of effective competition will be that at the time of purchase an IP long actually will pay a higher IP price reflecting payment of a commission to "roll over" the position, at the quarterly expiration date. The analogy to undated futures markets fails, however, for independent economic and legal reasons, and the contention that IP pricing will reflect payment of a "commission" to "roll over" this position is both speculative and irrelevant.

First, undated "futures" markets [73] require the joint determination of two prices: a spot commodities price and an associated intra-day interest charge [74] that is normally equal to the interest that could be earned by investing an amount equal to the value of the commodity plus the cost of one day's storage, *i.e.*, one day's carrying cost.[75] An investor cannot participate in the undated futures market without also paying or receiving the associated interest charge. Because of the need to incur this associated interest charge, the "futures contract" never gives rise to a present interest in the current value of a commodity. In contrast, IP contracts have no associated interest charge and constitute a *present* interest in a *current* value of an underlying portfolio. Thus, the presence of the associated interest charge creates in an "undated" futures market an element of futurity wholly absent from IPs.

Second, in regard to the suggestion that an IP long will pay a commission, in the form of higher prices, to "roll over" the position, the Commission believes that IP prices will be based largely on the value of the underlying portfolio and anticipated dividends on the components of the underlying index. The Commission does not believe that a "roll over" expense necessarily will be incorporated into an IP premium. Moreover, even if such a de factor charge were to develop, the Commission does not believe that such a charge would transmute the IP into a "contract for future delivery" of the underlying index because of the IPs' other distinguishing characteristics.

The CME also suggests that the IP dividend payment is analogous to a cash payment from the short of the long, related to measured or theoretical shrinkages in the value of the underlying product, as occurs in the frozen skinned ham futures market.[76] The Commission observes, however, that dividends are discretionary corporate payments, the size of which is determined on a voluntary basis by the corporation's board of directors. Corporations can raise or lower dividends, and the right to receive dividends is a significant attribute of stock. Thus, the payment of a cash dividend equivalent to IP holders ensures that the IP contains the investment features of stock. In contrast, the shrinkage factor in a frozen skinned ham futures contract is determined according to a pre-set formula calculated in order to assure that purchasers of frozen skinned hams do not pay for a weight that will not exist at that point in the future when the contract expires and the ham has shrunk. The shrinkage factor is thus inexorably linked to the futurity of the ham contract (*i.e.*, but for futurity, no price adjustment for shrinkage would be necessary). The IP contract has no futurity, is not subject to shrinkage, and receives and pays dividends based on discretionary corporate decisions. The Commission thus rejects the argument that IPs should be considered futures because the shrinkage of frozen skinned hams in similar to the payment of corporate dividends.

Finally, the CME suggests that the Phlx daily CIP cash-out does not alter its characterization as a futures contract. In this regard the CME claims that:

> the differences between the S&P Futures and CIP are insignificant, relating solely to a probable slight difference in pricing related to the theoretical daily convergence of the cash and futures contract in the case of the PHLX CIP and the quarterly convergence in the case of the CME's S&P 500 futures. That difference is defined by well established arbitrage relationships reflecting the differences in maturity dates.[77]

It is not at all clear that the pricing differences between the S&P 500 future and the CIP will be "insignificant." Pricing of IPs and index futures should diverge because of the substantial differences in margining practices, divergences between an IP's perpetual nature and the quarterly expiration feature of a stock index future, and the payment of regular cash dividend equivalents on IPs. In addition, IPs will trade on markets with different marketmaking characteristics and may be brought or sold by retail investors who may not participate in the future markets.[78] Many IP investors also may be effectively prohibited from participating in futures markets as a result of regulatory constraints or contractual prohibitions. Therefore, because of differences in the structure of the instruments, trading practices, and investor populations, it is unsubstantiated speculation to contend that the difference in pricing between IPs and index futures will be "insignificant."

In addition, the pricing differences between the S&P 500 future and all IPs (including those with quarterly cash-outs) will not replicate the formula commonly used to determine the theoretical value of a stock futures contract. Such a formula would add the interest on the price of the portfolio to the index price, subtract the annualized dividend yield, and factor in the days remaining until expiration.[79]

The futures commentators suggest that by manipulating the terms of this and similar equations they are able to demonstrate algebraic relationships between the pricing of IPs and the pricing of futures contracts, and thus that IPs should be regulated as futures because they are priced "like" futures. These equations, however, also can be used to demonstrate, by a different manipulation of the equation's terms, that existing futures contracts are equivalent to a straightforward stock portfolio position. It simply does not follow that futures should be regulated as stocks because they are priced "like" stocks, or vice versa. Similarly, IPs should not be regulated as futures merely because an algebraic manipulation of a pricing formula might demonstrate that they are priced like futures. Thus, the CME emphasis on pricing similarities is not determinative.

Other somewhat more complex arbitrage and equivalence relationships also do not serve to demonstrate that IPs are futures. For example, it is

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[73] Gehr describes the market studied in his article as a "curiosum." Gehr, *supra* note 72, at 89. No such curiosa exist in U.S. financial markets. Moreover, the fact that these markets might be called "futures" in Hong Kong or elsewhere does not mean that they would be defined as futures under the CEA. Finally, even if such markets were defined as futures markets under the CEA, the presence of a daily interest charge still would distinguish them from IPs.

[74] The daily "interest" payments, made for the privilege of deferring, making or taking delivery of the commodity, may be "positive," paid by sellers to buyers, or "negative," paid by buyers to sellers. Gehr, *id.*, at 90–91.

[75] *See* Gehr, *id.*, at 91.

[76] *See* 1st CME Letter are 2–3.

[77] *See* 5th CME Letter at 1.

[78] *See* note 96, *infra* and accompanying text.

[79] *See generally* B. Byrne Jr., *The Stock Index Futures Market* 170 (1987). The pricing formula contains the following elements: Futures price = (Stock Portfolio Price) + [(Risk Free Interest Rate − Annualized Dividend Yield on Stock Index) x Days Until Expiration/365].

Unlike futures, the interest on the difference between full payment for a portfolio of stocks and the earnest money margin payment for a future would not be relevant to IP pricing because IPs are fully paid for at the time of the purchase. In addition, the value of expected dividends on the portfolio would not be subtracted because the IP purchaser would have the right to receive the equivalent of those regular cash dividends.

possible to create a synthetic future on a stock index by purchasing European style calls and writing European style puts that have appropriate exercise prices and times to maturity.[80] "Hence when options on an asset or commodity are traded, but there is no futures market, it is always possible to construct a synthetic futures contract." [81] It does not follow, however, that, because futures positions can be replicated by options positions, futures are really options. Likewise, it does not follow that, because options positions can be replicated by futures, options are really futures. Similarly, futures can be used to replicate a variety of other securities. For example, futures can be used to create a portfolio that has the cash flow characteristics of a broad based equity portfolio. Again, it does not follow that an equity portfolio should be regulated as a future or that an index future should be regulated as a security because it is possible to define an arbitrage or equivalence relationship between them. Thus, while the modern theory of finance and its virtually limitless repertoire of equivalence relations may be very valuable for arbitrage, pricing and other analytic purposes, it is of little value when it comes to addressing the technical, legal issues of jurisdiction posed by the introduction of IPs and other financial products. Indeed, the limitless use of such models would be plainly inconsistent with the structure of the CEA and the securities laws, which are designed to separate regulation of futures and securitries.[82]

Moreover, the determination that IPs are securites and not futures contracts is in no way inconsistent with the purposes of the CEA and subsequent amendments thereto. Futures regulation at the federal level is a direct outgrowth of serious problems in the marketplace that Congress perceived as detrimental to interstate commerce and the national public interest.[83] In 1936, when the CEA was enacted (extensively amending the Grain Futures Act of 1922), Congress recognized that pervasive manipulation, excessive speculation, trading abuses (*e.g.*, wash sales, fictitious trades, and accommodation trades), and the rampant growth of boiler-rooms threatened to destroy the utility of the futures markets. In 1974, Congress determined that additional tools were necessary to ensure adequate regulation of all futures trading and futures professionals and to allow for the extension of the economic benefits of futures trading to those areas of commerce where the functions of futures markets might be useful.

Approval of IPs for trading on securities exchanges, in a fully regulated environment, would not give rise to the abuses that Congress sought to prevent by adopting the CEA. As exchange-listed securities, IPs will be subject to a comprehensive regulatory structure under the federal securities laws and to Commission oversight similar to the regulatory regime applicable to futures under the CEA.[84] Indeed, the CFTC's regulatory authority over contract markets was modeled in part on the Commission's authority over securites exchanges.[85]

3. IPs Are Not subject to the Investment Company Act

The Commission believes that an IP does not involve the creation of an investment company, because there is no "issuer," within the meaning of Section 3(a) of the Investment Company Act of 1940, 15 U.S.C. 80a–3, that is either "engaged * * * primarily in the business of investing, reinvesting, or trading in securities" or "engaged * * * in the business of investing, reinvesting, owning, holding, or trading in securities, and owns * * * investment securities having a value exceeding 40 per centum of the value of such issuer's total assets * * *." Moreover, OCC, the issuer of IPs, is a clearing agency registered as such under the Act. A Clearing agency cannot be registered as such under the Act until the Commission makes certain findings required by section 17A(b)(3), including that the clearing agency has the capacity to facilitate the prompt and accurate clearance and settlement of securities transactions and to safeguard securities and funds in its custody. These qualifications support the conclusion that the OCC would be an issuer primarily engaged "in a business or businesses other than that of investing, reinvesting, owning, holding, or trading in securities."[86] Moreover, given the existing securities law regulation of the OCC under Section 17A of the Act and the exchanges under Section 6 of the Act, the Commission sees no purpose that would be served by subjecting this arrangement to investment company regulation.

Nor does there exist an investment company within the OCC (or OCC combined with the exchanges), the IP purchasers viewed collectively, or the IP shorts viewed collectively. Unlike *Prudential Ins. Co.* v. *SEC*,[87] where the Third Circuit affirmed a finding of the Commission that the "Investment Fund" resulting from the sale of annuity contracts to a group of purchaser [88]

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[80] T. Copeland & J. Weston, *Financial Theory and Corporate Policy* 322 (3d ed., 1988).

[81] *Id.* at 323.

[82] When Congress in the CEA expanded the definition of the term "commodity" to include "all services, rights and interests in which contracts for future delivery are presently or in the future dealt in," it carefully preserved this Commission's jurisdiction, including its authority to regulate novel instruments as securities. Specifically, Congress included a proviso that, with the exception of the grant of exclusive jurisdiction regarding contracts for future delivery, "nothing contained in this section shall (i) supersede or limit the jurisdiction at any time conferred on the Securities and Exchange Commission * * * or (ii) restrict the Securities and Exchange Commission * * * from carrying out [its] duties and responsibilities * * *." This is further emphasized in Section 2(a)(1)(A) of the CEA which provides that "nothing in this Act shall be deemed to govern or in any way be applicable to transactions in * * * security rights . . . *unless such transactions involve the sale thereof for future delivery conducted on a board of trade.* 7 U.S.C. 2(a)(1)(A) (1982) (emphasis supplied).

The intent of Congress not to limit this Commission's traditional jurisdiction over the wide variety of financial instruments which fall within the broad definition of the term "security" under the federal securities laws was expressed repeatedly in the Act's legislative history. For example: Although the expanded definition of 'commodity' * * * includes rights and interests which are securities as defined in the federal securities laws * * * except as to transactions [involving delivery on a contract market], the expanded definition of commodity is *not intended to derrogate [sic] from the jurisdiction of the Securities and Exchange Commission* * * *.

See Report of the House Comm. on Agriculture to Accompany H.R. 13113, H.R. Rep. No. 93–975, 93d Cong., 2d Sess. 28 (1974) (emphasis supplied).

Attempts to rely on arbitrage relationships to limit the scope of the Commission's jurisdiction over contracts that are not for future delivery are thus directly at odds with the language and intent of the CEA.

[83] 7 U.S.C. 5 (1982).

[84] Bromberg, *Commodities Law and Securities—Overlaps and Preemptions*, 1 J. Corp. L. 217, 269 (1976). For example, both the Commission and the CFTC have the power to: (1) determine which contract markets and securities exchanges may operate under their respective jurisdictions; (2) establish the rules of membership and operation for the markets and exchanges under their respective jurisdiction; (3) oversee the exercise of self-regulatory authority by such markets and exchanges; (4) approve specific instruments for trading on those markets and exchanges; and (5) establish rules governing the registration and activities of brokers on those markets and exchanges. Indeed, it is important to note that both the securities and futures acts place a substantial emphasis on competition. *Compare* 15 U.S.C. 78f, 78o, and 78o–3 (1982) *with* 7 U.S.C. 19 (1982). In this regard, there is no basis upon which to conclude that Congress sought to adopt an expansive definition of the term "futures contracts" for the purpose of preventing competition by organized securities markets with the commodity markets.

[85] Courts also have observed that the "[s]tructure and power of the CFTC are duplicative of the SEC." Mullis v. Merrill Lynch, Pierce, Fenner, & Smith, Inc., 492 F. Supp. 1345, 1350 (D. Nev. 1980).

[86] *See* Section 3(b)(1) of the Investment Company Act of 1940. 15 U.S.C. 80a–3(b)(1) (1982).

[87] 326 F.2d 383 (3d Cir. 1964), *cert. denied*, 377 U.S.C. 953 (1964).

[88] As discussed earlier, the term "investment company" requires a finding that there exists an "issuer;" the term "issuer" is, in turn, defined to

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constituted a separate investment company, the Commission has found no separate investment company herein. In the case of IPs, nothing exists comparable to the Investment Fund in *Prudential*, which the court found to be a "completely segregated account, devoted to investing in securities."[89]

B. Benefits of Market Baskets

The Division of Market Regulation's Report on *The October 1987 Market Break* ("Staff Report"),[90] *An Overview of Program Trading and Its Impact on Current Market Practices* ("Katzenbach Report"),[91] Commission on recommendations,[92] and testimony by the Commission[93] suggested, among other things, that the listing and trading of a basket of stocks on an exchange could help ameliorate the volatility and steep stock price declines experienced during and since October 1987. As noted in the Staff Report, the creation of one or more posts where actual baskets or portfolios of stock could be traded could alter the dynamics of program trading, because the availability of such basket trading could, in effect, restore program trades to more traditional block trading techniques.[94] The Staff Report noted further that, while arbitrage ultimately would flow to individual component stocks, many institutional investors and member firms effecting index arbitrage transactions could focus their equity transactions at the basket posts where the specialist and trading crowd could provide efficiencies associated with effecting transactions in a portfolio of securities as opposed to individual stocks. This could add an additional layer of liquidity to the market to help absorb the velocity and concentration of trading associated with index-related trading strategies.[95] Moreover, because market baskets would be traded at a single location on the exchange floor, at which program trading order flow could be concentrated and imbalances in such trading determined, they would not result in the same market information limitations that result from executing program trades in the individual stocks. Finally, as separate consolidated products, market baskets would be easy and inexpensive to clear and settle and could provide an alternative vehicle for retail customers to invest in "the market."

For the reasons discussed below, the Commission believes that IPs will provide retail investors with a cost efficient means to make investment decisions based on the direction of the market as a whole[96] and may provide stock market participants several advantages over existing methods of effecting program trades of stocks.[97]

Because IPs would be traded as market baskets at a single specialist post on the exchanges' floors, program trading order flow involving IPs can be concentrated at that post and imbalances in such trading determined. Thus, IPs trading would not result in the same market information limitations that result from executing program trades in individual stocks. Moreover, the availability of IPs may provide a more efficient alternative to direct program trades of individual stocks for some institutional investors. Finally, as a separate product, IPs would be easy and inexpensive to trade, clear, and settle.

C. EIP Physical Delivery Proposal

The Commission also believes that the Amex proposal to permit physical delivery of its EIPs is consistent with the Act. Indeed, the availability of physical delivery permits institutions to employ EIPs to adjust their stock portfolios. As a result, EIPs may have greater potential for providing the liquidity benefits envisioned for market baskets in the Staff Report. Although providing certain benefits, the Amex's proposed EIP physical delivery does raise some concerns. The Amex's proposed rule change provides for a physical delivery facilitator ("PDF") to make physical delivery of the component stocks of the underlying portfolio to EIP holders who exercise the delivery privilege, if and only if, the number of delivery units for which holders have requested physical delivery exceeds the number of delivery units offered for physical delivery by persons holding short positions. The Amex proposes to inform the PDF, several hours before the opening of trading, of the imbalance between delivery units offered and delivery units demanded in order that the PDF may make arrangements that would enable it to obtain as agent at the opening the additional shares of the stocks that constitute the underlying portfolio to satisfy its obligations.

The Commission believes that PDF pre-opening knowledge of the imblance between delivery units offered and delivery units demanded can provide the PDF with an informational advantage concerning pre-opening order flow. Because this imbalance would always be on the buy side, and because its existence and magnitude would be known only to the PDF, the AMEX proposal raises the possibility that the PDF might take advantage of the information by establishing or liquidating stock, options, and/or futures positions. In this regard, however, the Amex will place restrictions on the PDF's function. In particular, the PDF must announce to the trading crowd, and the Exchange shall cause to be publicly reported, the physical delivery unit imbalance at or prior to 9:00 a.m. on Exercise Friday. Thus, the PDF's opportunity to trade on "inside" market information should be substantially reduced. Moreover, because the PDF must satisfy the physical delivery unit imbalance only by purchasing such imbalance at the opening rather than utilizing its existing inventory, the PDF's role is limited to that of an agent. Accordingly, the Commission believes the Amex has sufficiently addressed any

include "every person;" the term "person" is defined to include a "company;" and "company" is defined to include "any organized group of persons, whether incorporated or not." 15 U.S.C. 80a-3(a)(1), 2(a)(22), 2(a)(28), 2(a)(8) (1982).

[89] *Prudential*, 326 F.2d at 387 (1964).

[90] Division of Market Regulation, *The October 1987 Market Break* (February 1988) ("Staff Report").

[91] N. Katzenbach, *An Overview of Program Trading and Its Impact on Current Market Practices* (December 21, 1987) ("Katzenbach Report").

[92] Securities and Exchange Commission Recommendations Regarding the October 1987 Market Break (February 3, 1988).

[93] Testimony of David S. Ruder, Chairman, SEC, Before the Senate Committee on Banking, Housing, and Urban Affairs, on February 3, 1988.

[94] Staff Report at 3-18.

[95] *Id.* Similar ideas have been discussed in J. Grundfest, "Would More Regulation Prevent Another Black Monday?," Address before the CATO Institute Policy Forum on July 20, 1988, at 13-14 (available at the Commission); H. Stoll and R. Whaley, Program Trading and the Monday Massacre (November 4, 1987) (available at the Owen Graduate School of Management, Vanderbilt University); and H. Stoll, *Portfolio Trading*, Working Paper No. 87-14 (Sept. 1987) (available at the Owen Graduate School of Management, Vanderbilt University).

[96] Because of the small retail size of index participations and the attendant costs of executing sufficient IP transactions in an attempt to replicate large portfolios, the Commission believes that such instruments are designed to handle retail investor interest to invest in the "market". The Phlx, Amex, and CBOE believe that IPs could be used by retail investors to make investment decisions based on the direction of the market as a whole, thereby providing them with a cost efficient means by which to take advantage of anticipated market swings. In addition, an IP investment could provide an individual investor with an additional source of securities income. The product could also be useful to institutional investors for their investment strategies.

[97] In this regard, the Commission believes that the listing and trading of IPs on national securities exchanges may reduce market volatility associated with program trades of stock because, excluding the Amex EIP, IPs generally will be cash-settled, and existing exchanges' stock index options surveillance procedures will be applicable to IPs. The Amex notes that the share delivery alternative provides a feature discussed in the Staff Report and will enhance the utility of EIPs for institutions. Staff Report at 3-19 to 3-20.

concerns about the physical delivery mechanism.

D. Phlx Blue Chip Index

Certain of the proposed underlying portfolios, such as the Amex MMI and the S&P 500, have been published for several years and have been used as a basis for stock index options trading. In approving these portfolios as bases for options trading (and commenting on them for future trading), the Commission has determined that the use of these underlying portfolios does not raise manipulation concerns.[98] The Commission believes that the introduction of IPs based on these portfolios should not raise additional manipulation concerns.[99] The Phlx, however, has developed, specifically for IPs trading, a new Blue Chip CIP.

For several reasons, the Commission does not believe that the Blue Chip CIP raises significant manipulation concerns. Although the Blue Chip CIP is comprised of only 25 securities, it represents approximately 13 industry groups and is designed specifically to replicate the performance of the DJIA. The broad diversification, large capitalization, and deep and liquid markets of the portfolio's component stocks significantly minimize the potential for manipulation.[100] The ten most highly price-weighted stocks in the Blue Chip CIP account for less than 58% of the portfolio's cumulative market value.[101] Although IBM accounts for 8.73% of the Blue Chip CIP's price-weighting, the Commission believes manipulation of the CIP through trading in IBM is made more difficult because the stock is widely held and actively traded.[102] In addition, the proposed trading of IPs by the exchanges, which already have well-established stock and options surveillance procedures, does not appear to give rise to major surveillance concerns because existing surveillance procedures will be applicable to IPs trading. In addition, the Phlx has the necessary surveillance sharing arrangement with the exchanges whose securities comprise the Blue Chip CIP. Specifically, the Phlx and the NYSE are members of the Intermarket Surveillance Group ("ISG").[103] As members, these markets are required to share surveillance information with one another.

E. Proprietary Concerns

In general, the Phlx argues that simultaneous Commission approval of the Amex's proposed rule change to trade IPs would neither be in the public interest nor promote fair competition among exchange markets. In support of this view the Phlx suggests that Commission approval of Amex's "copy cat" filing would deprive the Phlx (which claims to be the IP developer) of the opportunity to take advantage of the primary market phenomenon. In addition, the Phlx suggests that such Commission approval would stifle product innovation, design, and creativity. The Commission is of the view that approval of the Amex and Phlx proposals simultaneously is consistent with the Act.

To the extent that Phlx's "copy cat" argument implicates a claim of misappropriation or infringement of a protected property right, the Commission believes it is inappropriate for it to attempt to resolve these issues in a proceeding involving the approval of securities to be traded in a particular market place. Congress has enacted an elaborate statutory framework for the establishment, preservation, and protection of intellectual property rights and established specific federal agencies (*e.g.*, the U.S. Patent and Trademark Office and the U.S. Copyright Office), to administer these laws. Separate state causes of action also may be available to Phlx. Neither the plain language of these statutes nor any provision of the Act suggests that Congress intended that the Commission attempt, in the context of an approval proceeding, to resolve intellectual property right claims that can be pursued elsewhere.

Moreover, while the Commission recognizes that, under the appropriate circumstances, incentives for innovation can promote long term competition and provide substantial benefits to the marketplace, on the basis of the record in this proceeding the Commission believes that simultaneous approval of the Phlx, Amex, and CBOE proposals is consistent with the Act. The Commission has been presented with numerous proposals to list and trade new securities products in recent years. In particular, the Commission, on November 22, 1982, approved a number of exchange proposals to trade narrow and/or broad based index options, often on similar or identical indexes, although such indexes were submitted to the Commission on different dates.[104]

The Commission recognizes Phlx's argument that IPs are a novel product involving substantially more innovation then past new options products. Nevertheless, the Commission believes that the opportunity for competition among markets trading IPs simultaneously furthers the purposes of the federal securities laws.[105] Past experience has indicated that an exchange which initially commences trading an options contract has an extremely large advantage over any subsequent competitor. Accordingly, the Commission is concerned that a temporary grant of exclusivity to the Phlx could have the effect of substantially reducing potential future competition in IPs, which effect outweighs the benefits of incentives to innovation that might, in this case, result from a temporary grant of exclusivity. Thus, the Commission has concluded that simultaneous approval of the proposals is consistent with the Act.

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[98] *See* section 6(b)(5) of the Act, 15 U.S.C. 78f(b)(5) (1982), which requires that the rules of a national securities exchange be designed to prevent fraudulent and manipulative practices.

[99] The Commission believes that IPs will not raise the same problems as other portfolio-related products regarding to intermarket trading strategies that at times may have increased the concentration and velocity of market movements. While the Commission notes that IPs will create arbitrage opportunities with either the cash market or other derivative products, and may spawn new intermarket trading strategies, because of the proposed 50% margin requirement for IPs (analogous to stock margin requirements) the leverage concerns that exist with other equity derivative products are absent. *See* Report of the Presidential Task Force on Market Mechanisms (January 1988), at III–7; Division of Market Regulation, *The October 1987 Market Break*, (February 2, 1988) at 11–1. Moreover, by providing market participants with a means to trade "the market" without buying and selling dozens or hundreds of individual stocks, IPs could lessen the impact of portfolio trading strategies.

[100] The Blue Chip CIP is price-weighted. Accordingly, an issue's weight in the total portfolio value is based on its price per share rather than its total market capitalization (*i.e.*, price per share times the number of shares outstanding).

[101] By comparison the 10 most highly price-weighted stocks in the MMI account for approximately 70% of that portfolio's cumulative market value.

[102] For the period February 1988 through January 1989, IBM's Average Daily Volume ("ADV") was approximately 1,357,900 shares.

[103] The on-going task of the ISG is to create and maintain a coordinated intermarket surveillance system to ensure that intermarket surveillance concerns are appropriately addressed.

[104] *See* Securities Exchange Act Release No. 19264 (November 22, 1982), 47 FR 53981.

[105] *See* Securities Exchange Act Release Nos. 18297 (December 2, 1981), 46 FR 60376 ("Unrestricted inter-exchange competition in the non-equity options markets most likely would result in the development of options contracts best suited to the economic needs of market participants rather than discourage innovation, research, and development of new products"), 22026 (May 8, 1985) 50 FR 20310 ("The goals of the Act are inconsistent with affirmatively delaying the start-up of trading in options on over-the-counter stocks in a manner that benefits one particular market place because there is no regulatory purpose which would require such a delay").

F. Regulation of Member Organizations Doing Business with Public Customers

1. Disclosure

In order to promote investor protection and to ensure adequate disclosure in connection with IPs, the Phlx, Amex, and CBOE propose that their rules pertaining to standardized options and the requirements of Commission Rule 9b–1 also apply to IPs trading.[106] In this regard, the OCC requests that the Commission issue an order pursuant to Rule 9b–1(a)(4) of the Act, treating IPs for disclosure purposes as another type of security that should be treated in a manner similar to "standardized options" under Rule 9b–1.[107] OCC suggests that each of the reasons cited by the Report of the Special Study of the Options Market ("Options Study")[108] for establishing a separate disclosure system for standardized options applies equally to IPs.

As with other securities issued by OCC, the clearing corporation interposes itself between IP buyers and sellers, and is technically the "issuer" of each contract. Moreover, just as with other OCC issued securities, the Commission believes providing investors with detailed descriptive information regarding the issuer would not be useful. Instead, a disclosure document that provides a discussion of the terms and risks of IPs would appear to be substantially more useful to investors.

The Commission believes that the reasons cited by the 1978 Options Study for establishing a separate disclosure system for other OCC issued securities are equally applicable to IPs. First, regular disclosure under the Securities Act of 1933 ("Securities Act") focuses on disclosures regarding the issuer of the security. As with other OCC issued securities providing this type of disclosure to investors is not useful for IPs. While OCC's solvency is obviously relevant, an investor primarily is purchasing the equivalent of a portfolio of stock. Accordingly, a disclosure document that provides a discussion of the terms and risks of IPs would appear substantially more useful to investors. Second, delivery of a Securities Act prospectus to all IP investors and redelivery of any updated prospectus would be an inefficient and unnecessarily costly way of educating the public regarding IPs. In this regard, OCC has prepared a special IPs disclosure document ("IDD") explaining in detail the economic and risk characteristics of IPs, the mechanism of buying, selling and exercising IPs, and the market in which IPs will trade.[109]

In addition, the Amex, Phlx, and CBOE propose to require that every exchange member and member organization deliver to each customer a current IDD at or prior to the time such customer's account is approved for IPs trading.[110]

As a result, the Commission believes that IPs are a type of security that falls into the category of "other security" under Rule 9b–1 which the Commission should treat in a manner similar to standardized options for purposes of Rule 9b–1 under the Act.[111] Indeed, in amending the definition of the term standardized option to include "such other securities as the Commission may, by order, designate" the Commission noted that it added the new language "to authorize the Commission, by order, to allow the use of Rule 9b–1 for new investment vehicles that the Commission believes should be included within the new disclosure framework."[112]

For the reasons discussed above, the Commission also believes that IPs should be treated in a manner similar to standardized options for purposes of Rules 134a and 153b and Form S–20 under the Securities Act. The Commission further believes that IPs should be treated similarly to standardized options for purposes of calculating Securities Act registration fees and that Form 8–A will be available for IP registration under the Act.

2. Marketing of IPs

The exchanges propose further that their existing options suitability rules[113] be applied to IP transactions. In general, under these procedures, before approving a customer's account for stock options trading, a firm must seek to obtain background and financial information including, among other things, the customer's investment experience, employment status, net worth, annual income, age, and investment objectives.

The Commission believes it appropriate that the exchanges apply the heightened suitability requirements of their options suitability rules to IPs transactions. Thus, no exchange member or member organization shall recommend to any customer any IP transaction unless such member or member organization has reasonable grounds to believe that the recommended transaction is not unsuitable for such customer.

The exchanges also propose that registered representatives who are qualified to sell stock index options should not be required to take a separate examination in order to transact business concerning index participations.[114] In addition, the exchanges do not propose that Registered Options Principals be required to take a separate IPs examination to qualify to act in a supervisory capacity with respect to the sale of IPs to public customers. the Commission concurs with the exchange's proposals.[115]

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[106] The applicability of Rule 9b–1 relieves an issuer from the requirement of delivering a prospectus to each IP customer. Nevertheless, an issuer must deliver its prospectus to each market upon which the IPs are traded, for the purpose of redelivery to IPs customers upon their request.

[107] *See* Letter from William H. Navin, Schiff Hardin & Waite, OCC legal counsel, to Richard G. Ketchum, Director, Division of Market Regulation, and Linda C. Quinn, Director, Division of Corporation Finance, SEC, dated July 6, 1988 ("Schiff Letter"). The Schiff letter requests also that IPs be treated in a manner similar to standardized options for purposes of Rules 134a and 153b and Form S–20 under the Securities Act of 1933 ("Securities Act"). In addition, the Schiff letter requests that the Commission staff confirm that IPs will be treated in a manner similar to standardized options for the purpose of calculating Securities Act registration fees and that Form 8–A will be available for IP registration under the Act notwithstanding that OCC is exempt from the periodic reporting requirements of the Act. *See* Schiff letter at 5 and 6 for a more detailed explanation. Moreover, although the exchanges have not requested exemption of IP underlying securities from the applicability of Rule 12a–6 of the Act, the Commission notes that pursuant to that Rule IP underlying securities are exempt from the operation of section 12(a) of the Act.

[108] *Report of the Special Study of the Options Markets to the Securities and Exchange Commission*, 96th Cong., 1st Sess. (Comm. Print 1978) ("Options Study").

[109] In reviewing any disclosure materials submitted, the Commission intends to assure that the materials specifically describe IPs, explain their uses, detail the special risks associated with IPs trading, and emphasize that IP contracts, unlike options, obligate a writer to pay to the holder an amount equivalent to a proportionate share of dividends declared on the underlying index components.

[110] *See, e.g.*, Amex Rule 926(a). The Commission believes that prior distribution of the IDD to investors is necessary before that person may effect a transaction in IPs. This prior distribution could be accomplished by physically delivering an IDD to an investor before he effects an IP transaction or by a mass mailing of the IDD to customers who have been approved for options trading, followed by a period of time in which investors could comprehend the IDD and other relevant information pertaining to the economic and risk characteristics of IPs trading.

[111] 17 CFR 240.9b–1(a)(4) (1988).

[112] *See* Securities Exchange Act Release No. 19055 (September 16, 1982), 47 FR 41950, 41954.

[113] *See, e.g.*, Phlx Rule 1026; CBOE Rule 9.7.

[114] *See, e.g.*, Phlx Rules 1024 and 1025; Amex Rules 920 and 922.

[115] Nevertheless, once IPs are approved for trading, we would anticipate that the question files for both the General Securities Representative and Registered Option Principal Examinations would be updated to include questions concerning index participations.

In addition, the exchanges propose that IPs be subject to position and exercise limits of 15 million IPs with respect to any particular underlying portfolio, and that each member and member organization shall file with the exchanges a report with respect to each account in which such member or member organization has an interest, each account of a partner, officer, director or employee of the member organization, and each customer account, which has established an aggregate position of 200,000 IPs (whether long or short) covering the same underlying portfolio. These rules are designed, in part, to limit the ability of IP traders to manipulate or disrupt the market for IPs or the underlying securities and provide the exchanges and the Commission with empirical data concerning the development of the IP market. In addition, such limits should help protect OCC from unacceptable risk. An IP position at the maximum level would have a current market value of approximately $390 million, less than for stock index options ($625 million). The Commission believes that fixed maximum position and exercise limits of 15 million IPs and the proposed 200,000 aggregate position reporting requirement of IPs are sufficient to achieve their intended purposes.

The exchanges propose to halt or suspend trading in IPs whenever the exchanges deem such action "appropriate in the interests of a fair and orderly market" and to protect investors.[116] This proposal is based on the assumption that accurate prices may be based only upon accurate pricing of the underlying portfolios. The Commission believes that this proposal is consistent with the Act.[117]

[116] *See, e.g.*, Phlx Rule 1047A. A trading halt in the primary market for underlying stocks accounting for 20% or more (in the case of CBOE) or 50% or more (in the case of Amex) of the portfolio value now will be one of several factors that may be considered by the exchanges in determining whether to halt trading in the IP.

[117] The recent Commission approval of proposed rule changes submitted by the NYSE, Phlx, Amex, and CBOE to halt trading on the exchanges for one hour if the Dow Jones Industrial Average ("DJIA") declines 250 or more points from its previous day's close and an additional two hours if the DJIA declines 400 points from its previous day's close ("circuit breaker" proposals) would be applicable to IPs. In this regard, the Phlx circuit breaker proposal does not alter existing Exchange trading halt and suspension rules. *See* Securities Exchange Act Release No. 26386 (December 22, 1988), 53 FR 52904. Thus, when the circuit breaker is activated Phlx Rule 1047A, which applies to CIP trading, will cause trading in CIPs to be halted because more than 20% of the value of the underlying security is not trading. In addition, the Amex circuit breaker proposal provides that all securities will halt trading on the exchange when the predetermined limits are reached. *See* Securities Exchange Act Release No. 26198 (October 19, 1988), 53 FR 41637. Because the Amex proposed EIP rule change defines the instrument as a security, EIPs will halt trading when the circuit breaker is activated. Moreover, although CBOE's circuit breaker proposal provides for the cessation of trading in stock options and stock index options when the predetermined limits are reached, the proposed CBOE VIP rules provide that VIP's will halt trading when 20% of the value of the underlying security is not trading. Thus, when the circuit breaker proposal halts trading on the Exchange VIPs also will cease trading.

3. Regulation T

The initial sale of an IP, by definition, will require the seller to go short. Accordingly, it is necessary to determine what margin treatment for IPs is appropriate. In this regard, the Phlx, CBOE, and Amex requested an interpretation from the FRB[118] that IPs be treated as equity securities rather than securities options under the relevant provisions of Regulation T.[119] The FRB's staff has issued a letter not objecting to the commencement of IPs trading employing the proposed initial (50% margin for IP purchases and 150% margin for IP shorts) and maintenance (130% of the value of all short IP positions and 25% of the value of all IP long positions maintained in customer margin accounts) margin for IPs.[120]

4. Clearance and Settlement

The exchanges propose to have IPs cleared and settled by the OCC. In this regard, on March 3, 1988, the OCC filed with the Commission a proposed rule change to enable the OCC to issue, clear, and settle index participations.[121] The proposal will allow the OCC to process IP transactions in accordance with procedures that are substantially similar to OCC's well-established systems and procedures.[122]

V. Conclusion

Based upon the aforementioned factors the Commission finds that the proposed rule changes relating to the listing and trading of index participations are consistent with the requirements of section 6(b)(5) and the rules and regulations thereunder.[123] The initiation of IPs trading, however, is conditioned upon:

(1) Issuance of an order under Rule 9b–1 approving the IPs disclosure document; and

(2) Issuance of an order approving the OCC's proposed rule change to issue, clear, and settle IPs.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[124] that the proposed rule changes be, and hereby are, approved.

By the Commission.

Jonathan G. Katz,

Secretary.

Dated: April 11, 1989.

Concurring Statement of Commissioner Cox

I concur in the Commission's finding that these products are securities. I also concur in the Commission's reasoning, except insofar as the order argues that the products are actually "stock" within the meaning of section 3(a)(10). I believe an IP may reasonably be classified as a "certificate of interest or participation." Moreover, the fact that IPs share so many of the characteristics of stock and other securities products strongly suggests that section 3(a)(10)'s residual classification for "any instrument commonly known as a 'security' " should be read to include IPs.

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[118] *See, e.g.*, Letters to Laura Homer, Securities Credit Officer, FRB from Richard Chase, Executive Vice President, Phlx (February 3, 1988) and from Gordon L. Nash, Senior Executive Vice President, Legal and Regulatory Affairs, Amex (March 8, 1989).

[119] *See* 12 CFR 220.5(c) and 220.18 (a), (c), and (f) (1988).

[120] *See* Letter from Laura Homer, Securities Credit Officer, FRB, to Richard Ketchum, Director, Division of Market Regulation, SEC, dated March 20, 1989. The exchanges proposed rule changes also contemplate the use of escrow receipts as cover for IP short positions and special margin treatment for certain market strategies. Currently, the exchanges and the FRB are in the process of working out such details. Thus, amendments to the margin regulations may be necessary.

[121] *See* Securities Exchange Act Release No. 25529 (March 29, 1988), 53 FR 10960.

[122] The Commission approved the OCC's proposed rule change to issue, clear, and settle IPs simultaneously with the exchanges' proposed rule changes to list and trade IPs. *See* Securities Exchange Act Release No. 26713 (April 11, 1989).

[123] The Commission notes that approval of the proposed rule changes is based upon a determination that the terms of the IPs contracts, at the present time, are consistent with the requirements of the Act. If the terms of the IPs contracts are changed in a material way, however, it would be necessary to publish notice of that change as an amendment to the filing in order to afford the public an opportunity to review the proposed modification and for the Commission to review its prior determination.

[124] 15 U.S.C. 78s(b)(2) (1982).

[Release No. 26710; File No. 3–6926]

Instinet Corp.; Order Affirming Decision by Delegated Authority

In the matter of Instinet Corporation, 14th Floor, 757 Third Avenue, New York, New York 10017.

I. Introduction

On October 2, 1987, the Division of Market Regulation ("Division") issued an order ("Division Order"), pursuant to delegated authority, 17 CFR 200.30–3(a)(12), approving a pilot program ("Pilot Program") for the exchange of quotation information between the National Association of Securities Dealers, Inc. ("NASD") and the

International Stock Exchange of the United Kingdom and the Republic of Ireland, Ltd. ("Exchange").[1] Instinet Corporation ("Instinet"), the only commentator on the program, has appealed the Division's delegated decision to the Commission. Instinet contends that the fee structure for the NASD's and the Exchange's program is anticompetitive, discriminatory and in contravention of the Securities Exchange Act of 1934 ("Act").[2] This order, for the reasons described below, affirms the Division's delegated determination.

II. Background

On March 14, 1986, the NASD first submitted a proposed rule change to implement the Pilot Program. Pursuant to that proposal ("original proposal"),[3] the Exchange and the NASD were to exchange data feeds essentially consisting of quotations in the top few hundred stocks quoted in their respective systems.[4]

The NASD established the Pilot Program as a first step toward the establishment of regulatory programs of mutual benefit, the expansion of trading opportunities in the United States and the United Kingdom, the provision of more efficient markets as well as economic incentives to direct orders in linked securities to the best available market.[5] Neither the NASD nor the Exchange was to charge each other or each other's subscribers any fee for receipt of the linkage data.

Instinet objected to the access terms of the original proposal because it believed that the terms were anticompetitive and discriminatory.[6] Instinet argued that the NASD receives data from the Exchange in its capacity as a self-regulatory organization ("SRO") and that, therefore, the NASD is required to share this data with Instinet at cost, or at least at the same price at which the NASD will furnish the data to certain NASD market makers. Similarly, Instinet argued that the quotes the NASD furnishes to the Exchange should be made available to Instinet on equal terms. The contemplated "in-kind" exchange of data puts Instinet, it argued, at an unfair competitive disadvantage as a data "retailer" vis a vis the NASD and the Exchange in both the U.S. and U.K. markets.

The Commission approved the operation of the Pilot Program in a series of orders [7] which authorized the program for temporary periods of time while the NASD sought to respond to Instinet's concerns.

On April 17, 1987, the NASD revised its original proposal.[8] Pursuant to the revised Pilot Program, the same information would be exchanged between the Exchange and the NASD;[9] however, the firms eligible to receive the information pursuant to the Pilot Program would be limited.[10] The NASD's modification reduced the free access to the linkage data to those NASDAQ market makers and Exchange dealers making markets in the issues that were quoted in the linkage and traded in both markets. The net effect of the revised terms was to decrease the number of TOPIC and NASDAQ terminals eligible to receive the linkage data; from 9,500 to 922 and 2,807 to 1,634, respectively. As revised, the NASD argued that it was appropriate to defer a specific cost allocation because, in part, the Pilot Program was an in-kind exchange between two marketplaces.[11] Despite the revisions, Instinet still contended that the revised Pilot Program was anticompetitive because the NASD and the Exchange neither separately allocated costs to the two markets nor charged a uniform fee to their subscribers.[12]

III. Statutory Standards

Instinet has asserted that the Pilot Program is not consistent with sections 11A and 15A of the Act. In particular, section 11A(a)(1)(C)(ii) sets forth as among the goals of the Act the furtherance of fair competition between exchange markets and markets other than exchange markets, while section 11A(a)(1)(D) provides that the linking of markets for qualified securities through communication and data processing facilities will foster efficiency, enhance competition, increase the information available to brokers, dealers and investors, facilitate the offsetting of investor's orders, and contribute to the best execution of such orders.[13]

Additionally, section 15A(b)(5) requires that the NASD provide for the equitable allocation of reasonable dues, fees and other charges. Section 15A(b)(6) requires that the rules of an association, such as the NASD, foster cooperation and coordination with respect to the various aspects of securities transactions, remove impediments to and perfect the mechanism of a free and open market, and protect investors and the public interest. Section 15A(b)(6) also requires that the rules not be designed to permit

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[1] Securities Exchange Act Release No. 24979 (October 2, 1987), 52 FR 27684 (October 8, 1987).

[2] On October 9, 1987, Instinet filed its Notice of Intention to Petition for Review [17 CFR 201.26(c)] of the Division's Order, which automatically stayed the Division's decision [17 CFR 201.26(e)]. The Commission issued an order lifting the stay pending final resolution on the merits. *See* Securities Exchange Act Release No. 25039, October 15, 1987. On April 7, 1988, the Commission issued an order granting Instinet's request for review. *See* Securities Exchange Act Release No. 25560 (April 7, 1988), 40 SEC Doc. 1092 (April 19, 1988). In accordance with the April 7, 1988 order, Instinet filed its statement in opposition to the Division's Order on May 3, 1988 ("Instinet's Statement") and the NASD filed its submission in opposition to Instinet's appeal on May 18, 1988 ("NASD's Statement").

[3] The original proposal was published for comment in Securities Exchange Act Release No. 23022 (March 14, 1986), 51 FR 9738 (March 20, 1986).

[4] Specifically, the Exchange was to provide the NASD price quotations for the securities that comprise the Financial Times/Stock Exchange ("FTSE")–100 Index, all Exchange listed non-U.K. domiciled securities disseminated through the Exchange's TOPIC International Service, and the current level of the FTSE–100 Index on a real-time basis. The NASD was to provide the Exchange the current bid/ask quotations for all NASDAQ market makers for the securities comprising the NASDAQ–100 Index, the NASDAQ Financial Index, and all American Depositary Receipts ("ADRs") underlying non-U.K. domiciled securities, and the current level of the NASDAQ–100 Index on a real-time basis.

[5] *See* File No. SR–NASD–87–20. Of course, the Pilot Program is only a link for the exchange of quotation information. It does not provide for the execution of trades.

[6] *See* letter from Daniel T. Brooks, Esq., of Cadwalader, Wickersham & Taft, Counsel for Instinet, to John Wheeler, Secretary, SEC, dated April 16, 1986, at 3.

[7] *See* Securities Exchange Act Release Nos. 23729 (October 20, 1986), 51 FR 39444 (October 28, 1986); 23952 (January 5, 1987), 52 FR 887 (January 9, 1987); 24292 (April 2, 1987), 52 FR 11578 (April 9, 1987); 24544 (June 3, 1987), 52 FR 21781 (June 9, 1987); 24862 (August 28, 1987), 52 FR 33674 (September 4, 1987).

[8] Securities Exchange Act Release No. 24364 (April 17, 1987), 52 FR 13891 (April 27, 1987).

[9] *See supra* note 4. Currently, the NASD is providing quotation information through the Pilot linkage on about 350 NASDAQ securities and the Exchange is providing similar information for about 398 securities.

10 Under the terms of the original proposal, all NASDAQ Level 2 and 3 terminals and all TOPIC terminals were eligible to receive the quotation information without any additional charge.

[11] *See* Securities Exchange Act Release No. 24364, 52 FR at 13893–94. *See also* letter from Frank J. Wilson, Vice President and General Counsel, NASD, to Jonathan G. Katz, Secretary, SEC, dated August 6, 1987.

[12] *See* letter from Daniel T. Brooks, Cadwalader, Wickersham & Taft, Counsel for Instinet, to Jonathan G. Katz, Secretary, SEC, dated June 30, 1987.

[13] Pursuant to section 11A(b)(1) of the Act, only exclusive securities information processors (SIPS) are required to register with the Commission, unless exempt from registration. *See* section 3(a)(22)(A) of the Act defining the term "securities information processor." As a separate matter, the Act empowers the Commission to adopt rules and regulations designed to assure that all SIPs may obtain on fair and reasonable terms quotation information that is collected or prepared by any exclusive processor of such information acting in its capacity as an exclusive processor, and to assure that all SIPs and SROs provide quotation and transaction information on terms that are not unreasonably discriminatory. *See* sections 11A(c)(1) (C) and (D) of the Act, respectively. We note that, as yet, no such rules that apply to this case have been promulgated by the Commission. Moreover, this case does not come before the Commission pursuant to the mechanism set forth in section 11A(b)(5).

unfair discrimination between customers, issuers, brokers, or dealers. Finally, section 15A(b)(9) prohibits the NASD from adopting a rule that fosters any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

IV. The Division's Decision

The Division's Order carefully evaluated the various arguments raised by Instinet.[14] In brief, the Division found that the provision to market makers of quotations in the stocks for which they make markets was analytically distinct from the charges made for quotation dissemination to non-market makers. The exchange of market maker quotation information is related to the NASD's maintenance of an over-the-counter ("OTC") marketplace which enables market makers to make more competitive and efficient markets and improves their ability to ensure that their customers receive best execution of their orders.[15] In contrast, the dissemination of such information to non-market makers primarily relates to the NASD's role as an exclusive information processor. The Division determined that the Pilot Program in essence constituted an intermarket linkage undertaken to foster more efficient market operations and expand opportunities for competitive market making, and was not simply a quotation dissemination service.[16] In reaching its conclusion, the Division considered the statutory goals served by the linkage, as well as the pilot nature of the linkage, the practical difficulties involved in accomplishing an allocation of costs in an international context, and the limited subset of information being exchanged. The Division then concluded that the effects on vendors, such as Instinet, were as narrowly limited as practically consistent with the start-up nature of the Pilot Program, and further, that the access terms in place for the two-year duration of the Pilot Program were fair, reasonable and consistent with the Act.

In addition, the Division's Order expressly stated that it would be preferable for the NASD and the Exchange to establish a separate cost allocation for the information that they were mutually providing.[17] The Division's Order further indicated the expectation that the NASD would continue to examine the possibility of developing a separate allocation of costs associated with the Pilot Program. The results of this examination were due to the Commission by April 2, 1989. The NASD, however, has requested that the Commission provide an additional 90 days for the NASD to gather this information.[18] Given the continuous operation of the link since April 1986 the Commission believes that a 45 day extension is adequate and hereby grants the NASD an extension until May 26, 1989.

V. Instinet's Appeal

In large part, Instinet's appeal restates issues already raised and addressed by the Division and argues that the Commission should reach a different result from the Division. We have considered Instinet's contentions that the terms of the Pilot Program, as approved, are anticompetitive, discriminatory and in contravention of sections 11A and 15A of the Act, and find them to be without merit. Consequently, for the reasons stated in the Division's Order, we affirm the Division's decision to approve the Pilot Program for a two-year period.

As noted above, section 11A of the Act governs SIPs and provides the Commission with jurisdiction over organizations engaged in the business of collecting, processing, or publishing information relating to quotations for, indications of interest to purchase and sell, and transactions in securities. The NASD is an SRO as well as an exclusive processor of securities information, and NASDAQ, Inc. is a registered SIP pursuant to section 11A(b)(2) of the Act.[19] As such, the NASD and its subsidiaries may not improperly limit access to the services they offer.[20]

Instinet asserts that the NASD has failed to allocate equitably the costs of the linkage consistent with section 15A(b)(5) of the Act because the costs have not been allocated to those entities actually receiving the Pilot information. The NASD and the Exchange, however, have determined for purposes of the Pilot Program to absorb the costs of providing the information, which in essence allocates the costs among all of the members of each organization.[21]

The Commission finds that the Pilot Program has the potential to benefit the markets, including all participants, as a whole, and serves to further the goals and purposes of the Act. Therefore, in light of the benefits and the various other factors discussed above and set forth in the Division's Order relevant to allocation, we believe that the decision

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[14] As noted above, Instinet frames its arguments under a variety of different statutory labels (*i.e.*, Sections 11A and 15A of the Act). Nevertheless, the key objection of Instinet is that it is not provided access to the information on the same terms as the NASD, or, in the alternative, that the NASD and the Exchange have not separately allocated the cost of the transmission to each market.

[15] The Commission recognizes that market makers will receive quotation information on all securities, including securities in which they do not make markets, covered by the Pilot Program. Nevertheless, the provision of the total range of quotations for securities subject to active market making will assist market makers in their ability to quote markets for related securites.

[16] *See* 52 FR at 37687.

[17] *See* 52 FR at 37687 and n.23.

[18] *See* letter from Frank J. Wilson, Executive Vice President and General Counsel, NASD to Richard Ketchum, Director, SEC, dated March 23, 1989.

[19] Section 3(a)(22)(A) expressly exempts SROs from the definition of a SIP. As noted, Section 11A(b)(1) of the Act requires SIPs to register with the Commission unless otherwise exempt from registration. *See supra* pages 5–6.

[20] Instinet alleges that the Pilot Program violates Sections 11A(c)(1)(C) and 11A(c)(1)(D). However, as noted above at n. 13, *supra*, those sections empower the Commission to adopt rules and regulations to assure the availability of certain information on terms that are fair, reasonable, and not unreasonably discriminatory. As yet, no such rules that apply to this case have been promulgated.

[21] In 1983, Instinet filed a petition with the Commission pursuant to section 11A(b)(5) of the Act, arguing that the fees proposed to be charged by the NASD for the provision of trade and quote information regarding NASDAQ securities constituted an inappropriate prohibition or limitation of access to NASDAQ information. In a succession of orders, the Commission found that the proposed fees indeed violated section 11A(b)(5) and required the NASD to adopt vendor subscriber charges that were cost-based (*i.e.*, calculated only to recover the NASD's costs of collecting and distributing that data to vendors). The United States Court of Appeals for the District of Columbia affirmed the Commission's decision. *See NASD* v. *SEC*, 801 F.2d 1415 (D.C. Cir. 1986). The implications of that proceeding are still under review. *See* SR–NASD–88–35, Securities Exchange Act Release No. 26119 (September 27, 1988), 53 FR 39002 (October 4, 1988), and letter from Daniel T. Brooks, Esq., of Cadwalader, Wickersham & Taft, Counsel for Instinet, to Jonathan G. Katz, dated October 31, 1988.

We note that the content of this proceeding differs from the NASDAQ fee proceeding in that NASDAQ proceeding involved Instinet as a direct competitior of the NASD seeking access to information which was solely in the control of the NASD. Accordingly, it was especially important in that proceeding to ensure that the NASD did not impermissibly pass on unnecessary fees to Instinet in an effort to stifle competition by forcing Instinet's subscribers to subsidize an NASD service that they were not receiving. In this case, however, Instinet has not shown that it or its subscribers would be forced to pay unnecessary fees and thus subsidize a service that they are not receiving, or that Instinet cannot itself receive the Pilot information at cost. Furthermore, in this context, the primary source of the contested information is the Exchange. Also, the earlier proceeding involved NASDAQ quotation services provided to both market makers and the investing public as opposed to this proposal, which results in data being provided only to a subset of NASDAQ market makers actively trading securities listed on the Exchange. Moreover, the data provided pursuant to the Pilot Program is only a subset of the information available through NASDAQ or from the Exchange. The Commission believes that in conceiving a new pilot program to establish potential new markets it is reasonable for the NASD and the Exchange to allocate temporarily costs in a manner that is sensitive to the start-up nature of the program.

by the NASD and the Exchange to absorb their costs in relation to providing the linkage data does not result in an inequitable allocation under section 15A(b)(5).

We specifically note that the Division's Order directed the NASD to continue its efforts to develop a separate cost allocation and to make monthly surveys on the costs and benefits of the Pilot Program, and report the results of this analysis to the Commission.[22] Similarly, the NASD in its submission to the Commission reaffirmed its commitment to that process and its understanding that it must report to the Commission.[23] As discussed, however, the NASD has requested additional time to submit the information. The Commission specifically endorses these efforts by the NASD. We expect that the NASD will make every effort to develop a separate cost allocation within the allotted time frame or justify why such an approach is not necessary.

Instinet also argues that the terms of the Pilot Program are inconsistent with section 15A(b)(6), which requires the NASD's rules to be designed "to foster cooperation and coordination with persons engaged in regulating, clearing settling, processing information with respect to and facilitating transactions in securities * * *" and not be "designed to permit unfair discrimination between customers * * *"

The Pilot Program is designed to further an international linkage. The Pilot Program, modest though it is, can be expected, as the Division found, to improve somewhat market quality in the affected stocks; it contains surveillance arrangements that are valuable from a regulatory viewpoint; and, it can be expected to be valuable purely as a means of developing a working relationship between a domestic and a foreign SRO. The Pilot Program thus aids in the establishment of an intermarket linkage that furthers and in consistent with the stated goals and purposes of the Act.

Moreover, Instinet has not been discriminated against unfairly. Instinet claims that it is discriminated against unfairly, not because it has been denied access to the linkage data, but rather because it cannot receive the linkage information on precisely the same terms as the market makers who make markets in the relevant securities that are listed on both NASDAQ and the Exchange. Instinet has not demonstrated that the terms of its access to the information through NASDAQ and SEAQ (of which the linkage information is but a subset), are unfair or unreasonable. In light of both the overriding goals and purposes served by the Program and the fact that the Program's present structure is necessitated by the nature of the over-the-counter market maker system, Instinet has not suffered any discrimination that could be termed unfair.

Finally, Instinet contends that the Pilot Program imposes a burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Act, however, does not prohibit rules that impose *any* burden on competition; rather, the Act prohibits rules that impose any burden on competition which is "not necessary or appropriate" in furtherance of the goals set forth in the Act.[24] In the instant case, the Division found that despite "some" competitive impact on Instinet and/or other vendors of securities information as a result of the Pilot Program's operation, that "burden" was a necessary and appropriate consequence of the proposed link so as to enhance the efficient execution of securities transactions and promote fair competition.[25] In contrast to the dissemination of quotation information to non-market makers, which primarily serves only the goal of widespread dissemination of information, the Division believed that the market maker to market maker linkage would enhance market making competition, increase market liquidity, assist market makers to disseminate more accurate and reliable information, and improve the market makers' ability to ensure that their customers receive the best execution of their orders.[26]

Apart from restating arguments raised before the Division, Instinet also argues that the Division's Order improperly balanced other goals of the Act against any possible anticompetitive effects of the Pilot Program.[27] The Act requires the rules of the NASD to: "remove impediments to and perfect the mechanism of a free and open market and a national market system" and to "not impose any burden on competition *not necessary* or *appropriate* in furtherance of the *purposes* of the Act" (emphasis added).[28] Two of those "purposes" are to promote fair competition between exchange markets and markets other than exchange markets and to assure economically efficient executions of securities transactions.[29] The NASD's proposed Pilot Program was analyzed by the Division as to its ability to advance these statutory goals.[30] We find that the Division, in analyzing and approving the proposed rule change, properly balanced the purposes of the Act it expected the Pilot Program to achieve against any anticompetitive effects of the linkage. The Division found that the benefits derived from the first transatlantic linkage, which is only an informational linkage and does not have an execution capability, coupled with the Pilot Program's adequate regulatory safeguards and the trial nature of the program, outweighted any potential harm to competing vendors. Instinet provides no evidence in its Statement that would warrant a different conclusion.

Accordingly, we find that the NASD's proposed rule change does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act and that approval of the proposed rule change on a two-year pilot basis is consistent with the Act and the rules and regulations thereunder applicable to the NASD, and, in particular, the requirements of sections 11A and 15A, and the rules and regulations thereunder.

VI. Conclusion

After carefully reviewing the arguments made in the Instinet and the NASD submissions in opposition to and in support of the Division's Order, respectively, the Commission believes that Instinet's contentions, fully considered and rejected in the Division's Order, do not warrant reversal or modification of the Division's delegated decision.

Accordingly, It Is Hereby Ordered, that the Division's delegated determination as set forth in the

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[22] *See* Division Order, 52 FR at 37686 n.19 and 27687 n.23. *See also* pp. 8–9. The Commission originally directed the NASD to provide this report by April 2, 1989. By this order we are granting the NASD an extension through May 26, 1989.

[23] NASD's Statement, at 8.

[24] *See Bradford Nat'l. Clearing Corp.* v. *SEC*, 590 F.2d 1085, 1105; and *Report to Accompany S. 249: Securities Acts Amendments of 1975*, S. Rep. 75, 94th Cong., 1st Sess. 30 *Amendments of 1975*, S. Rep. 75, 94th Cong., 1st Sess. 30 *reprinted in* 1975 U.S. Code Cong. & Admin. News 208.

[25] *See* Division Order, 52 FR at 37687.

[26] *See* Section 11A(a)(1)(C)(i)–(iv), and (D).

[27] Instinet claims that the Division's Order acknowledges that the Pilot Program may have an "adverse competitive impact on Instinet." *See* Instinet's Statement, at 44–45 (citing Division Order, 52 FR 37687). The Commission notes that, although the Division's Order expresses the Division's recognition of a competitive impact as a result of the Pilot Program's operation, the Division's Order indicates that such impact, if any, is "limited." *See* Division Order, 52 FR 37687.

[28] *See* 15 U.S.C. 78*o*–3(b) (6) and (9).

[29] *See* 15 U.S.C. 78k–1(a)(1)(C).

[30] *See* Division Order, 52 FR 37686–87.

Division's Order be, and hereby is, affirmed. The request of the NASD dated March 23, 1989 for additional time to submit cost allocation information is granted in part, to extend the time for submission of such information to May 26, 1989.

By the Commission.

Dated: April 11, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-9128 Filed 4-14-89; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submittion.

DATE: Comments should be submitted on or before May 17, 1989. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: William Cline, Small Business Administration, 1441 L Street NW., Room 200, Washington, DC 20416, Telephone: (202) 653-8538.

OMB Reviewer: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Telephone: (202) 395-7340.

Title: Survey of Small/Medium-Sized Motor Carriers.

Form Number: SBA Form 1673.

Frequency: One time.

Description of Respondents: Small/Medium-Sized Motor Carriers.

Annual Responses: 2,000.

Annual Burden Hours: 1,000.

William Cline,

Chief, Administrative Information Branch.

[FR Doc. 89-9093 Filed 4-14-89; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD1 89-014]

New York Harbor Traffic Management Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Request for applicants.

SUMMARY: The U.S. Coast Guard is seeking applicants for appointment to membership on the New York Harbor Traffic Management Advisory Committee (NYHTMAC). The mission of the committee is to provide consultation and advice on a wide range of issues. It provides local expertise on such matters as vessel traffic in New York Harbor, anchorages, communications, and advice on a wide range of matters regarding all facets of navigation safety and other related topics dealing with waterways traffic management. The New York Harbor Traffic Management Advisory Committee operates in the public interest and addresses those duties imposed on the Coast Guard by law.

The advisory committee shall be composed of no fewer than 12 members from Federal, State and local government, the marine industry, port and harbor authorities, environmental groups, and other interested parties who will be appointed by the Secretary of Transportation upon recommendation by the Commander, First Coast Guard District and the Commandant of the Coast Guard for a term not to exceed the expiration date of the charter.

The duration of this committee is continuous with a charter renewal required every two (2) years. Appointments to the committee are for the two (2) year life of the charter and candidates for appointment shall apply prior to charter expiration. The present charter expires on August 1, 1989.

To achieve the balance of membership required by the Federal Advisory Committee Act, the Coast Guard is especially interested in receiving applications from minorities and women.

DATE: Requests for applications should be received no later than April 30, 1989.

ADDRESS: Persons interested in applying should write to Captain of the Port of New York, Bldg. 109, Governors Island, NY 10004, Attn: Waterways Management Office.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander L.M. Brooks, USCG, Executive Secretary, NY Harbor Traffic Management Advisory Committee, Captain of the Port of New York, Bldg. 109, Governors Island, NY 10004, or by calling (212) 668-7834.

Dated: April 4, 1989.

R.I. Rybacki,

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

[FR Doc. 89-9027 Filed 4-14-89; 8:45 am]

BILLING CODE 4910-14-M

Maritime Administration

[Docket No. M-009]

Request for Information on Availability of U.S. Vessels for Alaska Cleanup Operations

AGENCY: Maritime Administration, DOT.

ACTION: Information request.

SUMMARY: Exxon Shipping Company of Houston, TX has requested that, pursuant to 64 Stat. 1120, the Secretary of the Treasury waive compliance with the coastwise laws and regulations to allow any foreign-flag vessels to engage in any aspect of the oil-spill recovery operations connected with the grounding of the tanker EXXON VALDEZ. Waiver is requested for the duration of those operations.

The Maritime Administration (MARAD), U.S. Department of Transportation, has been requested to advise the U.S. Customs Service, Department of the Treasury, of U.S.-flag vessels that might be made available for such operations in lieu of foreign vessels. Owners/operators of suitable vessels are asked to contact MARAD, providing name of vessel, type, size, proposed technical usage in cleanup, date available, and point of contact.

ADDRESS: Telegraphic, facsimile, or telephonic responses may be made to the Director, Office of Domestic Shipping, MAR-810, Room 7301, Maritime Administration, U.S. Department of Transportation, Washington, DC 20590. Telephone: (202) 366-5123 or FAX: (202) 366-3889.

FOR FURTHER INFORMATION CONTACT: Howard G. Norseth or Robert M. Christie, Office of Domestic Shipping, Maritime Administration. Telephone: (202) 366-5123 or 5124.

By Order of the Maritime Administrator.

Date: April 12, 1989.

James E. Saari,

Secretary, Maritime Administration.

[FR Doc. 89-9152 Filed 4-14-89; 8:45 am]

BILLING CODE 4910-81-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: April 11, 1989.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 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 addresed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

On April 10, 1989, the Department requested an emergency approval by the Office of Management and Budget by April 11, 1989.

Alcohol, Tobacco and Firearms

OMB Number: New.
Form Number: None.
Type of Review: New Collection.
Title: Survey of Selected Members of Firearms Industry.
Description: Survey to determine the sporting uses of various types of semiautomatic.
Respondents: Individuals or households, State or local governments, Businesses or other for-profit, Non-profit institutions, Small businesses or organizations.
Estimated Number of Respondents: 3,000.
Estimated Burden Hours Per Response: 15 minutes.
Frequency of Response: One time.
Estimated Total Reporting Burden: 750 hours.
Clearance Officer: Robert Masarsky (202) 566-7077, Bureau of Alcohol, Tobacco and Firearms, Room 7011, 1200 Pennsylvania Avenue, NW., Washington, DC 20226.
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 89-9039 Filed 4-14-89; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Date: April 11, 1989.

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, Pub. L. 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 2224, 15th and Pennsylvania Avenue NW., Washington DC 20220.

Internal Revenue Service

OMB Number: 1545-0763
Form Number: None
Type of Review: Extension
Title: Qualified Conservation Contributions
Description: The information is necessary to comply with various substantive requirements of section 170(h), which describes situations in which a taxpayer is entitled to an income tax deduction for a charitable contribution for conservation purposes of a partial interest in real property.
Respondents: Individuals or households, State or local government, Farms, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, Small businesses or organizations
Estimated Number of Recordkeepers: 1,000
Estimated Burden Hours Per Recordkeeper: 1 hour 15 minutes
Frequency of Response: Recordkeeping
Estimated Total Reporting Burden: 1,250 hours.
OMB Number: 1545-0963
Form Number: None
Type of Review: Extension
Title: Installment Method Reporting by Dealers in Personal Property; Changes From Accrual to Installment Method Reporting
Description: These regulations describe the procedure by which dealers in personal property may adopt or change to the installment method of accounting from another method of accounting.
Respondents: Businesses or other for-profit, Small businesses or organizations
Estimated Number of Respondents: 50,000
Estimated Burden Hours Per Response: 1 hour
Frequency of Response: At the time of election
Estimated Total Reporting Burden: 50,000 hours.
Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 89-9091 Filed 4-14-89; 8:45 am]

BILLING CODE 4810-25-M

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.[1]

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The agency responsible for sponsoring the information collection; (2) the title of the information collection; (3) the Department form number(s), if applicable; (4) a description of the need and its use; (5) frequency of the information collection, if applicable; (6) who will be required or asked to respond; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to complete the information collection; and (9) an indication of whether section 3504(h) of Public Law 96-511 applies.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from John Turner, Veterans Benefits Administration, (203C), Department of Veterans Affairs, 810 Vermont Avenue

[1] On March 15, 1989, the Veterans Administration became the Department of Veterans Affairs (see 54 FR 10476).

NW., Washington, DC 20420 (202) 233–2744.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503, (202) 395–7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 30 days of this notice.

By direction of the Secretary:

Frank E. Lalley,

Director, Office of Information Management and Statistics.

Extension

1. Veterans Benefits Administration
2. Mortgage Loan Information
3. VA Form 26–8982
4. This Information Card will be used to collect social security numbers as part of the accounting information required by credit reporting agencies on delinquent borrowers. Respondents are all veteran and nonveteran borrowers listed on the master records of the VA Portfolio Loan System (PLS).
5. On occasion.
6. Individuals or households.
7. 8,600 responses.
8. 1/12 hour.
9. Not applicable.

[FR Doc. 89–9070 Filed 4–14–89; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GP89–23–000]

Phillips 66 Natural Gas Co. et al.; Effectiveness of Withdrawal

April 12, 1989.

Take notice that on February 17, 1989, Phillips 66 Natural Gas Company and Phillips Petroleum Company (Phillips) filed, pursuant to Rule 216 (18 CFR 385.216), a motion to withdraw its complaint against ANR Pipeline Company. No objections were filed, therefore the withdrawal became effective on March 4, 1989, fifteen days after filing pursuant to Rule 216(b) (18 CFR 385.216(b)).

Lois D. Cashell,

Secretary.

[FR Doc. 89–9105 Filed 4–14–89; 8:45 am]

BILLING CODE 6717–01–M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 72
Monday, April 17, 1989

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 DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:00 p.m. on Tuesday, April 11, 1989, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider: (1) Administrative enforcement proceedings; (2) reports of the Director, Office of Corporate Audits and Internal Investigations; (3) a request for financial assistance pursuant to section 13(c) of the Federal Deposit Insurance Act; (4) the application of National Bank of Greece, S. A., Athens, Greece, for Federal deposit insurance of deposits received at and recorded for the accounts of its State-licensed branch to be located at 1765 Centre Street, West Roxbury, Massachusetts; (5) matters relating to the possible closing of certain insured banks; (6) matters concerning the Corporation's corporate activities; (7) a recommendation concerning the Corporation's assistance agreement pursuant to section 13(c) of the Federal Deposit Insurance Act; and (8) certain personnnel matters.

In calling the meeting, the Board determined, on motion of Director C. C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Dated: April 12, 1989.

Federal Deposit Insurance Corporation.
Robert E. Feldman,
Deputy Executive Secretary.
[FR Doc. 89-9178 Filed 4-14-89; 9:16 am]
BILLING CODE 6714-01-M

TENNESSEE VALLEY AUTHORITY

(Meeting No. 1415)

TIME AND DATE: 10 a.m. (EDT), Wednesday, April 19, 1989.

PLACE: TVA West Tower Auditorium, 400 West Summit Hill Drive, Knoxville, Tennessee.

STATUS: Open.

AGENDA

Approval of minutes of meeting held on March 15, 1989.

Action Items

New Business

A—Budget and Financing

A1. Modification of the Capital Budget Financed from Power Proceeds and Borrowings for Fiscal Year 1989—Sequoyah Nuclear Plant Unit 1 Turbogenerator Trip to Investigate, Repair, Return to Service, Ensure Adequate Internal Protection and Perform Root Cause Analysis.

A2. Modification of the Capital Budget Financed from Power Proceeds and Borrowings for Fiscal Year 1989—Browns Ferry Nuclear Plant Unit 2 Heating, Ventilation, and Air Conditioning Ductwork Seismic Qualification.

A3. Modification of the Capital Budget Financed from Power Proceeds and Borrowings for Fiscal Year 1989—Browns Ferry Nuclear Plant Nuclear Recovery Project.

A4. Modification of the Capital Budget Financed from Power Proceeds and Borrowings for Fiscal Year 1989—Arrangements for Removal, Disposal, and Replacement of TVA-owned Capacitor Equipment at Substations Involving Polychlorinated Byphenyls and Transfer to Distributors of Remaining Substation-Type Capacitor Equipment.

A5. Modification of the Capital Budget Financed from Power Proceeds and Borrowings for Fiscal Year 1989—Paradise Fossil Plant-Construct Dredge Pond and Dredge Ash Pond.

A6. Modification of the Capital Budget Financed from Power Proceeds and Borrowing for Fiscal Year 1989—Shawnee Fossil Plant-Replace Reheat and Secondary Superheater Pendants and Crossover Elements on Units 5, 7, and 9.

A7. Modification of the Capital Budget Financed from Power Proceeds and Borrowings for Fiscal Year 1989—Widows Creek Fossil Plant Unit 8—(1) Replace Secondary Superheater Crossover Tubes.

B—Purchase Awards

*B1. Request for Proposal RH-19130A—Browns Ferry Nuclear Plant Training Siumulator, ADP Equipment Management Department.

B2. Request for Proposal RB-34531B—Nuclear Telecommunications System Project, Communications Group.

C—Power Items

C1. Renewal Power Contract with Jellico, Tennessee.

E—Real Property Transactions

E1. Proposal to Declare Approximately 164.6 Acres of Tims Ford Reservoir, Monroe Country, Tennessee, Surplus Land and Authorize its Sale by Tennessee Elk River Development Agency as Agent for TVA.

E2. Abandonment of Easement Rights Affecting Approximately 1.6 Acres of Watts Bar Reservior Land in Loudon County, Tennessee.

E3. Sale of Permanent Easement Affecting Approximately 0.92 Acres Located in Trigg County, Kentucky.

E4. Proposed Deed Coveying a Portion of Freeport 500/230-kV Substation to Mississippi Power & Light Company in Accordance with Amendatory Agreement TV-68885A.

E5. Abandonment of Easement Rights Affecting Approximately 44 Acres of Watts Bar Reservior Land in Loudon County, Tennessee.

F—Unclassified

F1. Supplement No. 9 to Contract No. TV-62313A with the State of Alabama.

F2. Supplement No. 7 to Contract No. TV-62311A with the Tennessee Emergency Management Agency.

F3. Filing of a Condemnation Case.

F4. Revision of TVA Code IV Disposal.

F5. Supplement No. 3 to Contract No. TV-53306A with Monroe County, Tennessee, for the Niles Ferry Industrial Park.

F6. Subagreement No. 29 to Memorandum of Understanding with U.S. Army, Corps of Engineers, Contract No. TV-23928A, for New Main Lock at Kentucky Dam.

F7. Contract No. TV-77677A with Walker State Technical College, Sumiton, Alabama, for a Business and Industry Center.

F8. Contract No. TV-77679A with Snead State Community College, Boaz, Alabama, for a Continuing Education Center.

F9. Interagency Agreement with U.S. Army Project Manager for Binary Munitions.

F10. Personal Services Contracts: (1) American Technical Associates, Inc. (No. TV-77737A), (2) Midwest Technical, Inc. (No TV-77735A), and (3) Consultants & Designers Inc. (No. TV-77736A).

F11. Recommendations Resulting from the 53rd Annual Wage Conference—1988—

Hourly and Annual Trades and Labor Employees.

*Items approved by individual Board members. This would give formal ratification to the Board's action.

CONTACT PERSON FOR MORE INFORMATION: Alan Carmichael, Manager of Public Affairs, or a member of his staff can respond to requests for information about this meeting. Call (615) 632–8000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 479–4412.

Dated: April 12, 1989.

Edward S. Christenbury,

General Counsel and Secretary.

[FR Doc. 89–9181 Filed 4–13–89; 9:40 am]

BILLING CODE 8120–01–M

THE UNITED STATES INSTITUTE OF PEACE

DATE: Thursday and Friday April 20, 21 1989.

TIME: Thursday and Friday 9:00 a.m. to 5:30 p.m.

PLACE: The United States Institute of Peace, 1550 M Street NW. ground floor (conference room).

STATUS: Open session.

9:00 a.m. to 5:30 p.m. (portions may be closed pursuant to subsection (c) of section 552(b) of title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Pub. L. (98–525).

AGENDA (Tentative):

Meeting of the Board of Directors convened. Chairman's Report, President's Report. Committee Reports. Consideration of the minutes of the Thirty-First meeting of the Board. Consideration of grant application matters.

CONTACT: Ms. Olympia Diniak. Telephone (202) 457–1700.

Dated: April 11, 1989.

Bernice J. Carney,

Administrative Officer, The United States Institute of Peace.

[FR Doc. 89–9265 Filed 4–13–89; 2:13 pm]

BILLING CODE 3155–01–M

THE UNITED STATES INSTITUTE OF PEACE

DATE: Friday, Saturday, and Sunday, April 21–23, 1989.

TIME: Friday, 8:30 p.m.–10:30 p.m.; Saturday, 9:00 a.m.–5:00 p.m.

PLACE: Wye Plantation, Aspen Institute for Humanistic Studies, River House Facility, Queenstown, Maryland.

STATUS: Open session.

AGENDA (Tentative):

Goals and overview of program review conference. Discussion sessions on Institute programs; Grants, Fellowships, Research and Studies, Education and Public Information, and Library; long range planning issues; future directions; most promising approaches to peacemaking and conflict resolution; and changes in the USSR and their implications for the Institute's work.

CONTACT: Ms. Olympia Diniak. Telephone (202) 457–1700.

Dated: April 13, 1989.

Bernice J. Carney,

Administrative Officer, The United States Institute of Peace.

[FR Doc. 89–9266 Filed 4–13–89; 2:13 pm]

BILLING CODE 3155–01–M

Corrections

Federal Register
Vol. 54, No. 72
Monday, April 17, 1989

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 AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No.89-033]

Restrictions on Importation of Horses From Czechoslovakia

Correction

In rule document 89-7412 beginning on page 12897 in the issue of Wednesday, March 29, 1989, make the following correction:

On page 12898, in the first column, in the second line, "March 30, 1989" should read "May 30, 1989".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 675

Groundfish of the Bering Sea and Aleutian Islands Area

Correction

In proposed rule document 89-8452 appearing on page 14256 in the issue of Monday, April 10, 1989, make the following correction:

On page 14256, in the first column, under **DATE:**, in the third line, "May 22, 1989" should read "June 5, 1989".

BILLING CODE 1505-01-D

federal register

Monday
April 17, 1989

Part II

Department of Education

Office of Special Education and Rehabilitative Services

Final Funding Priority for the Educational Media Research, Production, Distribution, and Training Program; Notice

Part II

Department of Education

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

Final Funding Priority for the Educational Media Research, Production, Distribution, and Training Program

AGENCY: Office of Special Education and Rehabilitative Services; Department of Education.

ACTION: Notice of final funding priority.

SUMMARY: The Secretary announces this final funding priority for the Educational Media Research, Production, Distribution, and Training Program to ensure effective use of program funds and to direct funds to the area identified during fiscal year 1989.

EFFECTIVE DATE: This final funding priority takes effect either 45 days after publication in the **Federal Register** or later if Congress takes certain adjournments. If you want to know the effective date of this funding priority call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Joseph Clair, Division of Educational Services, Office of Special Education Programs, Department of Education, 400 Maryland Avenue SW., (Switzer Building, Room 4622–M.S. 2466), Washington, DC 20202. Telephone: (202) 732–4503.

SUPPLEMENTARY INFORMATION: On January 5, 1989 at 54 FR 375 the Secretary published in the **Federal Register** a Notice of Proposed Funding Priority for fiscal year 1989 under the Educational Media Research, Production, Distribution and Training Program. This notice announces the final funding priority for fiscal year 1989.

The Educational Media Research, Production, Distribution and Training program is designed to promote the educational advancement of handicapped persons by providing assistance for: (a) Conducting research on the use of educational media and technology for persons with handicaps; (b) producing and distributing educational media for the use of handicapped persons, their parents, their actual and potential employers, and other persons directly involved in work for the advancement of persons with handicaps: and (c) training persons in the use of educational media for the instruction of handicapped persons.

Public Comment

In the Notice of Proposed Priority the Secretary invited comments on the proposed priority. The Secretary did not receive any comments. The Secretary has made no substantive changes in the priority since publication of the notice.

Priority—Government Subsidization for the Manufacture and Distribution of a Line 21 Decoder (CFDA 84.026)

This priority supports a cooperative agreement to produce and distribute a decoder nationally. The project must include a plan which, in addition to describing the specific features of the decoder, details how at least 33,000 Line 21 decoders will be produced and distributed nationally. The project must include quality assurance in decoder design. The project must ensure product reliability, and must include a plan for warranty and repair service. The timeline for production of at least 33,000 Line 21 decoder units must be detailed enough to assure that a continuing supply of decoders will be nationally available, no later than 30 days following the award, to consumers who are hearing impaired. The projected timelines must be supported by commitments of full production and distribution from one or more manufacturers and retailers to assure production and sale of these units nationally. A projected retail price must be included, including any dealer markups and, to the extent possible, relating cost factors to specific features of the decoder.

Finally, the project must include an evaluation plan that allows monthly tracking and reporting of the number of subsidized decoders produced, the number of decoders distributed but unsold, the number (if any) of decoders on backorder, the number (if any) and type of complaints received relating to the decoder, and the number and type of service requests received.

Intergovernmental Review

This program is subject to the requirements of Executive order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Authority: 20 U.S.C. 1451.

Dated: March 30, 1989.

Lauro F. Cavazos,

Secretary of Education.

(Catalog of Federal Domestic Assistance No. 84.026: Educational Media Research, Production, Distribution, and Training)

[FR Doc. 89–9058 Filed 4–14–89; 8:45 am]

BILLING CODE 4000–01–M

federal register

Monday
April 17, 1989

Part III

Department of Education

34 CFR Part 307

Services for Deaf-Blind Children and Youth; Final Regulations and Notice

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

34 CFR Part 307

RIN 1820-AA53

Services for Deaf-Blind Children and Youth Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the Services for Deaf-Blind Children and Youth program. These regulations are needed to implement the amendments to Section 622 of the Education of the Handicapped Act (EHA) included in the EHA Amendments of 1986, Pub. L. 99-457. In addition, the amendments to the regulations are needed to implement programmatic changes, including the way the Secretary makes awards to State and multi-State projects under § 307.11.

EFFECTIVE DATE: These regulations take effect either June 1, 1989, or later if the Congress takes certain adjournments. A document announcing the effective date will be published in the **Federal Register**. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: R. Paul Thompson, Severely Handicapped Branch, Office of Special Education Programs, Department of Education, 400 Maryland Avenue SW. (Switzer Building, Room 4620), Washington, DC 20202-2734.

SUPPLEMENTARY INFORMATION: These regulations have been prepared to implement Section 622 of Part C of the EHA, as amended by the EHA Amendments of 1986, Pub. L. 99-457, and to make programmatic changes in the regulations. These changes do not alter principal objectives or activities authorized under this authority, but rather clarify and support the central thrust of the program.

On November 22, 1988, the Secretary published a notice of proposed rulemaking for the Services for Deaf-Blind Children and Youth program in the **Federal Register** (Volume No. 53, pages 47406-47410). The NPRM included a discussion of the following proposed major changes: (1) Provision was added for the support of extended school-year programs; (2) new, weighted criteria were added for the evaluation of applications submitted under this program; (3) provision was made for the national technical assistance providers, upon request from a § 307.11 grantee or a State educational agency, to extend technical assistance to other public and private agencies and organizations that provide services to deaf-blind children and youth; (4) factors were established that the Secretary considers for determining the amount of awards for State and multi-State deaf-blind projects; (5) provision was made for the preparation of a coordinated plan for each deaf-blind child and youth served; (6) provision was made for State and multi-State projects to provide technical assistance to other public and private agencies and organizations providing educational and related services to deaf-blind children and youth in addition to previous authority to provide technical assistance to State educational agencies; (7) specific provision for support of data analysis and dissemination activities was deleted; and (8) a requirement was added that State and multi-State projects for deaf-blind children and youth and technical assistance providers coordinate the provision of their services with other relevant service providers of deaf-blind children and youth.

A technical change has been made to § 307.33(f)(2) to correct the reference in the NPRM to the State Operated or Supported Programs for Handicapped Children Program under Title I of the Elementary and Secondary Education Act of 1965.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, four parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM follows.

Issues are discussed under the section of the regulations to which they pertain.

Section 307.4

Comment: One commenter expressed concern that the addition to the regulations at § 307.4 of a definition of "severely handicapped children and youth," might be interpreted as placing deaf-blind individuals into that classification without adequate consideration of the widely varying levels of cognitive abilities of deaf-blind individuals.

Discussion: The addition to the regulations of the definition of severely handicapped children and youth is necessary to define the term used in § 307.10(d), which makes provision for support of extended school year demonstration programs for this population. As defined, the term includes not only those individuals with severe mental retardation, but also those persons, like the entire deaf-blind population, who have two or more serious handicapping conditions.

Change: None.

Section 307.10

Comment: One commenter expressed concern that removal of provision for dissemination activities, formerly addressed under §§ 307.10(e) and 307.15 from the regulations signaled a perceived Department intent to no longer support those activities.

Discussion: It was not the intent of the Secretary to discontinue support for dissemination activities under this program. Section 622(d) of the EHA requires the Secretary to disseminate materials and information concerning effective practices in working with deaf-blind children and youth. The removal of dissemination activities from the regulations does not mean that the Secretary will no longer support these activities.

Change: None.

Comment: One commenter expressed concern that adding extended school year demonstration programs to the list of authorized activities in § 307.10 would decrease the funds available to pre-existing program initiatives.

Discussion: Authorization to support extended school year demonstration projects was added to the program legislation at section 622(e) of the EHA by the EHA Amendments of 1986. The Secretary believes this change is needed to implement congressional direction.

Change: None.

Section 307.11

Comment: One commenter suggested changing the language of § 307.11(a)(1)(i), which discussed "children and youth at risk of being identified as deaf-blind," to read: "children and youth who, due to their presenting handicaps, need thorough diagnosis and evaluation in order to determine the presence or absence of deaf-blindness" because the existing language carried deprecating implications to being identified as deaf-blind.

Discussion: The language, "children and youth at risk of being certified deaf-blind," is used in the statute. While sensitive to the commenter's concern for any negative implications that might be seen in this language, the Secretary has decided that the language in the regulation is necessary to include those children and youth whose age or severity of handicap might prohibit

conclusive diagnosis and evaluation. No negative connotations are intended.

Change: None.

Section 307.12

Comment: One commenter recommended that technical assistance provided under proposed § 307.12 be made available only upon request of the State educational agency or a grantee funded under § 307.11 to other agencies, institutions, and organizations. A second commenter expressed concern that States should have more control on decisions about the amount and type of technical assistance given to them by the § 307.12 grantee.

Discussion: The proposed regulations at § 307.12(b) were intended to require that technical assistance be provided at the request of the State educational agency or grantee. The Secretary agrees that the regulations should have adequate controls to assure that the organization requesting technical assistance and the provider of the technical assistance reach concurrence on what is provided.

Change: A change has been made to the program regulations at § 307.12(a) to clarify that the § 307.12 grantee can provide technical assistance in support of the activities authorized under § 307.11. The proposed regulations at § 307.12(b) have been modified, and a new paragraph § 307.12(c) has been added to reflect the changes suggested.

Section 307.15

Comment: One commenter objected to the deletion of § 307.15, because he favored continued support for dissemination activities.

Discussion: As discussed above in the material under § 307.10, section 622(d) of the EHA requires the Secretary to disseminate materials and information concerning effective practices in working with deaf-blind children and youth. The Secretary will continue to support dissemination activities.

Change: None.

Section 307.31

Comment: Three commenters expressed general approval of the proposal in the notice of proposed rulemaking to create equity in allocation of funds among State and multi-State projects by identifying the factors to be considered in funding decisions. Two of those commenters, however, raised concern that in the Secretary's consideration of the factors described at proposed § 307.31 (a)–(d) for determining the amount of an award under proposed § 307.11, sufficient attention may not be given to certain States having small populations, limited resources, or lower relative costs for education. The third commenter suggested that there be a three-year phasing in period for the adoption of this "formula" so that shifts in funding levels occur gradually.

Discussion: The factors identified at proposed § 307.31 will permit the Secretary sufficient flexibility to consider the unique needs, resources, and costs of each applicant. The criteria used for determining the amount of awards are not part of a funding formula. Instead they provide a flexible basis for determining funding levels based on multiple factors. Thus, no phase-in period is appropriate as this procedure is not a fixed formula for the award of funds.

Change: None.

Section 307.33

Comment: One commenter recommended deleting § 307.33(b)(2) which required consideration of the extent to which the applicant's plan for services and technical assistance implements current research and exemplary practices including, among other things, provision of the maximum integration of deaf-blind children and youth in the least restrictive environment. The commenter believed that deaf-blind children and youth should be served in the environment appropriate to their needs.

Discussion: The proposed regulations are intended to assure that all deaf-blind children and youth be appropriately served by grantees under this program, with all due consideration of their individual skills and differences. The proposed regulations do not preclude a grantee from serving these children in any environment in which they are placed, but do prefer applications that implement current research and exemplary practices, including the education of handicapped children, including children in public or private institutions or other care facilities, to the maximum extent appropriate with children who are not handicapped. It is the intention of the Secretary that grants awarded under this program promote the upgrading and improvement of services to all deaf-blind children and youth, while encouraging their placement in the least restrictive environment appropriate to their needs.

Change: None.

Comment: One commenter recommended that experience in providing quality educational services to deaf-blind children and youth in least restrictive environments be deleted from proposed § 307.33(c) as a criterion in the selection of key project personnel, as he did not believe this experience to be pertinent to serving all deaf-blind children and youth.

Discussion: The intent of the selection criteria in the proposed regulations was that experience in providing quality educational services to deaf-blind children and youth in least restrictive environments be represented within the key personnel of each project, rather than that all project personnel be expected to have this experience.

Change: The regulations of § 307.33(c)(3) have been modified to clarify that experience in providing quality educational services to deaf-blind children and youth in the least restrictive environments appropriate to their needs be represented in the key project personnel.

Comment: One commenter expressed the need to specify and give a heavy weighting factor to evidence of the support of the State educational agency of the State where services are proposed to be provided, in the procedure identified in proposed § 307.34 for selecting among two or more applications for State or multi-State projects proposing to serve the same State.

Discussion: The Secretary agrees that the support of the appropriate State educational agency, along with other agencies serving deaf-blind children and youth, is very important for the successful implementation of any State or multi-State deaf-blind project. The weight given the proposed coordination factor (§ 307.33(f)) is sufficient to encourage effective coordination by grantees with relevant agencies.

Change: The selection criteria at 34 CFR 307.33(f) have been modified to include consideration of evidence that an applicant will be able to coordinate its activities with State educational agencies, in addition to other appropriate agencies within the State serving deaf-blind children and youth.

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 the order.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local

governments for coordination and review of proposed Federal financial assistance.

In accordance with the Order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not 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 307

Education, Education of handicapped, Education—research, Grants program—education, Reporting and recordkeeping requirements, Teachers.

Dated: March 2, 1989.

Lauro F. Cavazos,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number 84.025, Services for Deaf-Blind Children and Youth)

The Secretary amends Part 307 of Title 34 of the Code of Federal Regulations as follows:

PART 307—SERVICES FOR DEAF-BLIND CHILDREN AND YOUTH

1. The authority citation for Part 307 is revised to read as follows:

Authority: 20 U.S.C. 1422, unless otherwise noted.

2. In § 307.4, paragraph (b) is amended by adding "Severely handicapped children and youth (§ 315.4(d))" in alphabetical order to the list of terms defined, and by revising the heading and introductory text, and the authority citation, to read as follows:

§ 307.4 What definitions apply to the Services for Deaf-Blind Children and Youth Programs?

* * * * *

(b) *Definitions in 34 CFR Part 300 and Part 315.* The following terms used in this part are defined in 34 CFR Part 300 or Part 315.

* * * * *

(Authority: 20 U.S.C. 1401 (1), (16), (17), and (18), and 20 U.S.C. 1424)

3. Section 307.10 is amended by revising paragraph (a), removing paragraphs (d) and (e), adding "and" at the end of paragraph (c), and adding a new paragraph (d), to read as follows:

§ 307.10 What types of activities are considered for support under this part?

* * * * *

(a) Services to deaf-blind children and youth and technical assistance to agencies, institutions, and organizations, as described in § 307.11;

* * * * *

(d) Extended school year educational or related service demonstration projects for severely handicapped children and youth, including children and youth who are deaf-blind, if those activities are provided during an interim period of at least four weeks between two regular school terms.

(Authority: 20 U.S.C. 1422)

4. Section 307.11 is amended by revising the section heading and adding a new paragraph (a)(1)(iv), revising the introductory text of paragraph (a)(2), removing "and" from the end of paragraph (a)(2)(iv), removing the period at the end of paragraph (a)(2)(v) and adding in its place, "; and", adding a new paragraph (a)(2)(vi), revising paragraph (b)(1), removing "and" from the end of paragraph (c)(1), revising paragraph (c)(2), adding a new paragraph (c)(3), revising paragraph (d) and removing paragraph (e) to read as follows:

§ 307.11 What types of services to deaf-blind children and youth and technical assistance are considered for support under this part?

(a) * * *

(1) * * *

(iv) Preparation of a coordinated plan for each child and youth served, describing all the services provided under paragraphs (a)(1) (i) through (iii) of this section. These services must be in accordance with other Federal and State programs.

(2) Technical assistance to public and private agencies, institutions, and organizations providing educational, transitional, vocational, early identification, and related services to deaf-blind children and youth, to assure that they may more effectively—

* * * * *

(vi) Promote the integration of deaf-blind children and youth with other handicapped and nonhandicapped children and youth.

(b)(1) Each grantee under this section shall give priority in the use of project funds to the provision of services described in paragraph (a)(1) of this section and to the provision of technical assistance as described in paragraph (a)(2) of this section.

* * * * *

(c) * * *

(2) Provide technical assistance to the public and private agencies, institutions, and organizations served under paragraph (a)(2) of this section in the development and implementation of procedures for evaluating the effectiveness of services they provide to deaf-blind children and youth; and

(3) Engage in on-going coordination with the State educational agency, the State's lead agency under Part H of the EHA, and other State agencies responsible for providing services to deaf-blind children and youth, in the provision of services under this section.

(d) For the purpose of making awards under § 307.11, the Secretary may make awards for single or multi-State projects. Each State may be served through only one project.

(Authority: 20 U.S.C. 1422)

5. Section 307.12 is amended by revising paragraphs (a) and the introductory text of (b) and adding a new paragraph (c) to read as follows:

§ 307.12 What types of technical assistance to grantees under § 307.11 are considered for support under this part?

(a) The Secretary may provide financial assistance under this part for projects that establish and support programs for the provision of technical assistance on the activities authorized under § 307.11.

(b) Technical assistance services made available under this section must be requested by a grantee under § 307.11 or a State educational agency, and may be extended at the request of the § 307.11 grantee or a State educational agency to other agencies, institutions, and organizations providing services to deaf-blind children and youth, to—

* * * * *

(c) Technical assistance services made available under this section are to be determined by mutual agreement between the § 307.12 technical assistance grantee and the § 307.11 grantee or the State education agency.

(Authority: 20 U.S.C. 1422)

§ 307.14, 307.15 and 307.20 [Removed]

6. Sections 307.14, 307.15, and 307.20 are removed.

7. Section 307.31 is revised to read as follows:

§ 307.31 How does the Secretary determine the amount of an award under § 307.11?

In determining the funding level for each award under § 307.11 for a single or multi-State deaf-blind services project, the Secretary considers the following factors:

(a) The number of children and youth in the States the applicant proposes to serve.

(b) The number of deaf-blind children and youth in the State benefiting from services under § 307.11(a) (1) and (2) in relation to the total number of such children in all States.

(c) The relative cost of providing services authorized under this part to deaf-blind children and youth in the States the applicant proposes to serve.

(d) The quality of the application submitted under this part evaluated on the basis of the criteria in § 307.33.

(Authority: 20 U.S.C. 1422)

8. A new § 307.32 is added to read as follows:

§ 307.32 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application submitted under § 307.11 on the basis of the criteria in § 307.33. If more than one eligible application is received on behalf of any State for an award under § 307.11, the Secretary uses the procedures established in § 307.34. The Secretary uses the selection criteria in § 307.35 or 307.36 to evaluate applications submitted for other types of activities authorized under this part.

(b) The Secretary awards up to 100 points for these criteria.

(c) The maximum possible score for each criterion is indicated in parentheses.

(Authority: 20 U.S.C. 1422)

9. A new § 307.33 is added to read as follows:

§ 307.33 What criteria does the Secretary use to evaluate an application?

The Secretary uses the following criteria to evaluate the quality of an application submitted under § 307.11. Each applicant may receive up to a total of 100 points. Each application will be evaluated based only on those factors of each criterion that relate to the service needs of the States the applicant proposes to serve.

(a) *Justification for the project, extent of need, and expected impact.* (15 points) The Secretary reviews each application to determine the justification for the proposed activities in each State, based on the extent of State need for and expected impact from the provision of services and technical assistance, including consideration of—

(1) The age, number, and location of deaf-blind children and youth in the State to whom the State is not obligated to provide a free appropriate public education under Part B of the EHA, to whom the State is not providing special educational and related services under some other authority, and to whom the applicant proposes to provide services;

(a) The Specific actions needed for the provision of educational and related services to deaf-blind children and youth based on the State's plan for delivery of services to students with handicaps required under Parts B and H;

(3) The specific actions needed for the provision of technical assistance addressed by the project based on the State's plan for provision of technical assistance to providers of services to deaf-blind children and youth;

(4) The expected benefits to be gained by providing the educational and related services to deaf-blind children and youth to be served by the project, their parents and service providers; and

(5) The expected benefits to be gained by meeting the technical assistance needs of service providers to be assisted by the project.

(b) *Quality of services and technical assistance.* (40 points) The Secretary reviews each application to determine the quality of the plan to provide services and technical assistance in each State to be served, including—

(1) The quality of the design of the project for providing each of the educational and related services described under § 307.11(a)(1), and for providing technical assistance as described under § 307.11(a)(2);

(2) The extent to which the applicant's plan for providing services and technical assistance implements current research findings and exemplary practices including arranging for services that are age-appropriate for project participants, and providing for the maximum integration of deaf-blind children and youth in the least restrictive environment;

(3) How well the objectives of the project respond to the needs of deaf-blind children and youth in the State, their parents, and service providers;

(4) The extent to which the plan of management is effective and ensures proper and efficient provision of educational and related services and technical assistance, and reflects an analysis of the service needs of deaf-blind children and youth in the State;

(5) How well the objectives of the project relate to the purpose of the program;

(6) How the project will assist the State in developing and implementing the State's Comprehensive Systems of Personnel Development required under Parts B and H of EHA;

(7) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition;

(8) The quality of the applicant's plan for providing consultative and training services for families of deaf-blind children and youth as described in § 307.11(a)(1)(iii);

(9) The quality of the applicant's plan to involve parents in the development and delivery of appropriate services to their deaf-blind children and youth; and

(10) The extent to which services provided for children birth through two years of age meet the requirements of Part H of the EHA.

(c) *Quality of key personnel.* (10 points) The Secretary reviews each application to determine the qualifications of the key personnel the applicant plans to use on the project for the provision of services to deaf-blind children and youth and technical assistance to agencies, including—

(1) The qualifications of the project director;

(2) The qualifications of each of the other key personnel to be used in the project;

(3) The experience among key personnel referred to in paragraphs (c)(1) and (2) of this section, relevant to the provision of quality educational services to deaf-blind children and youth in less restrictive environments.

(4) The time that each person referred to in paragraphs (c)(1) and (2) of this section will commit to the project; and

(5) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(d) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project including the extent to which the applicant's methods of evaluation—

(1) Are appropriate to the project; and

(2) To the extent possible, are objective and produce data that are quantifiable.

(Cross-reference: See 34 CFR 75.590 Evaluation by the grantee)

(e) *Budget and cost effectiveness.* (10 points) The Secretary reviews each application to determine for technical assistance, and direct services where

appropriate, in each State to be served, the extent to which—

(1) The budgets are adequate to support the activities;

(2) Costs are reasonable in relation to the objectives of the project; and

(3) Costs reflect—

(i) The time anticipated to be spent by each staff member for the provision of services described under § 307.11(a)(1) and costs for contracted and consultative services, travel costs, and other direct costs;

(ii) The time anticipated to be spent by each staff member for the provision of technical assistance under § 307.11(a)(2), and costs for contracted and consultative services, travel, and other related expenditures for technical assistance activities; and

(iii) The time anticipated to be spent for administrative services.

(Authority: 20 U.S.C. 1422)

(f) *Coordination.* (5 points) The Secretary reviews each application to determine the adequacy of the applicant's procedures for initiating and maintaining coordination in each State to be served with—

(1) Related activities funded from grants, contracts, and cooperative agreements awarded under Parts C, D, E, F, and G of the EHA; and

(2) Relevant agencies, organizations, and institutions having responsibility to deliver services to deaf-blind children and youth in the State, including State education agencies and other service providers under Parts B and H of the EHA and section 1221 *et seq.* of Title I of the Elementary and Secondary Education Act of 11965.

(g) *Dissemination.* (5 points) The Secretary reviews each application to determine the adequacy of the applicant's procedures for disseminating significant project information within the State(s) to providers of services to deaf-blind children and youth.

(Authority: 20 U.S.C. 1422)

(OMB Control No. 1820-0028, expires 9-89)

10. A new § 307.34 is added to read as follows:

§ 307.34 What procedures does the Secretary use if more than one application for an award under § 307.11 proposes to serve the same State?

If more than one eligible application is received on behalf of any State for an award under § 307.11, the Secretary applies the selection criteria in § 307.33 and selects the highest ranked application for funding.

(Authority: 20 U.S.C. 1422)

11. A new § 307.35 is added to read as follows:

§ 307.35 What are the selection criteria used to evaluate an application under § 307.10(d)?

The Secretary uses the selection criteria in 34 CFR 315.33 to evaluate an application for an extended school year project under § 307.10(d).

(Authority: 20 U.S.C. 1422)

(OMB Control No. 1820.0028, expires 9-89)

12. A new § 307.36 is added to read as follows:

§ 307.36 What are the selection criteria used to evaluate an application under § 307.12 or § 307.13?

The Secretary uses the following criteria to evaluate an application for the provision of technical assistance under § 307.12 or § 307.13:

(a) *Extent of need and expected impact of the project.* (25 points) The Secretary reviews each application to determine the extent to which the project will assist in meeting national needs in the provision of services to deaf-blind children and youth, including consideration of—

(1) The extent and importance of the needs addressed by the project;

(2) The expected benefits to deaf-blind children and youth served by the project, their parents, and service providers; and

(3) The national significance of the project in terms of potential benefits to deaf-blind children and youth who are not directly involved in the project.

(b) *Plan of operation.* (25 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the design of the project;

(2) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(3) How well the objectives of the project relate to the purpose of the program;

(4) The quality of the applicant's plan to use its resources and personnel to achieve each objective;

(5) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition.

(c) *Quality of key personnel.* (15 points) (1) The Secretary reviews each application to determine the quality of the key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (c)(1) (i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(2) To determine personnel qualifications under paragraphs (c)(1) (i) and (ii) of this section, the Secretary considers—

(i) Experience and training in fields related to the objectives of the project; and

(ii) Any other qualifications that pertain to the quality of the project.

(d) *Budget and cost-effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project; and

(2) Costs are reasonable in relation to the objectives of the project.

(e) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate to the project; and

(2) To the extent possible, are objective and produce data that are quantifiable.

(Cross-reference: See 34 CFR 75.590 Evaluation by the grantee.)

(f) *Adequacy of resources.* (5 points) The Secretary reviews each application

to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

(g) *Dissemination plan.* (5 points) The Secretary reviews each application to determine the quality of the dissemination plan for the project, including the extent to which the applicant's plan—

(1) Ensures proper and efficient dissemination of project information throughout the Nation; and

(2) Adequately includes the content, intended audiences, and timelines for production of all project documents and other products that the applicant will disseminate.

(Authority: 20 U.S.C. 1422)

(OMB Control No. 1820–0028, expires 9–89)

§ 307.40 [Removed]

13. Section 307.40 is removed.

§ 307.42 [Removed]

14. Section 307.42 is removed.

[FR Doc. 89–9059 Filed 4–14–89; 8:45 am]
BILLING CODE 4000–01–M

DEPARTMENT OF EDUCATION

Services for Deaf-Blind Children and Youth; Invitation for Applications for New Awards for Fiscal Year 1989

Title of Program

Services for Deaf-Blind Children and Youth. CFDA 84.025.

Purpose

To provide support for projects that enhance services to deaf-blind children and youth, particularly by providing technical assistance to State educational agencies and others who are involved in the education of deaf-blind children and youth.

Applicable Regulations

(a) The Services for Deaf-Blind Children and Youth Program Regulations, 34 CFR Part 307, as amended in this issue of the **Federal Register**, and (b) the Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, 79, 80, and 85.

Priorities

In accordance with 34 CFR 307.10 and the Education Department General Administrative Regulations (EDGAR) at 34 CFR 75.105(c)(3), the Secretary will give an absolute preference under the Services for Deaf-Blind Children and Youth Program, CFDA 84.025, in fiscal year 1989, to applications that respond to the following priorities; that is, the Secretary will select for funding only those applications proposing projects that meet these priorities.

Priority 1: State and Multi-State Deaf-Blind Projects (84.025A)

This priority supports State and multi-State deaf-blind projects for services to deaf-blind children and youth, and technical assistance to agencies, institutions and organizations as described in 34 CFR 307.11.

This priority provides the opportunity for a State presently participating in a multi-State project for deaf-blind children and youth to apply for a single State project.

Priority 2: Technical Assistance for Transitional Services (84.025E)

This priority supports one project to provide technical assistance for transitional services as described in 34 CFR 307.13.

The Secretary particularly invites applications for technical assistance services on a national basis that include a process for assessing the technical assistance needs of each State by involving the State agencies responsible for special education and ongoing and short-term adult services; that facilitate the involvement of parents of youth with deaf-blindness in the promotion and implementation of these activities; and that focus on the development and improvement of transitional services, including employment training and support, recreation and leisure programs, and independent and supported living programs, that are provided in integrated community settings where regular contacts occur with persons who are not disabled. However, in accordance with the Education Department General Administrative Regulations (EDGAR) at 34 CFR 75.105(c)(1) an application that meets this invitational priority will not be given a competitive or absolute preference over other applications.

SERVICES FOR DEAF-BLIND CHILDREN AND YOUTH

[Application Notices for Fiscal Year 1989]

[Applications will be available on April 17, 1989]

Title and CFDA No.	Deadline for transmittal of applications	Deadline for intergovernmental review	Available funds	Estimated range of awards	Estimated size of awards	Estimated number of awards	Project period in months
State and Multi-State Projects for Deaf-Blind Children and Youth (CFDA No. 84.025A)	6-02-89	8-02-89	6,606,000	25,000 to 510,000	157,000	42	Up to 36.
Technical Assistance for Transitional Services (CFDA No. 84.025E)	6-02-89	8-02-89	600,000	600,000	600,000	1	Up to 36.

Eligible Applicants

Public or nonprofit private agencies, institutions, or organizations may apply for an award under these competitions.

For Applications or Information Contact: Joseph Clair, U.S. Department of Education, Division of Educational Services, 400 Maryland Avenue SW., Switzer Building, Room 4622, Washington, DC 20202. Telephone: (202) 732-4503

Program Authority: 20 U.S.C. 1422.

Dated: April 11, 1989.

Patricia McGill Smith,

Acting Assistant Secretary, Office of Special Education and Rehabilitative Services.

(Catalog of Federal Domestic Assistance No. 84.025; Services for Deaf-Blind Children and Youth Program.)

[FR Doc. 89-9060 Filed 4-14-89; 8:45 am]

BILLING CODE 4000-01-M

federal register

Monday
April 17, 1989

Part IV

Environmental Protection Agency

40 CFR Part 261

Mining Waste Exclusion Under Subtitle C of RCRA; Notice of Proposed Rulemaking

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SWH-FRL-3546-4]

Mining Waste Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: Section 3001(b)(3)(A)(ii) of the Resource Conservation and Recovery Act (RCRA) excludes "solid waste from the extraction, beneficiation, and processing of ores and minerals" from regulation as hazardous waste under Subtitle C of RCRA, pending completion of certain studies by EPA. In 1980, EPA interpreted this exclusion (on a temporary basis) to encompass "solid waste from the exploration, mining, milling, smelting, and refining of ores and minerals" (45 FR 76619, November 19, 1980).

In today's notice, which supercedes and substantially revises the NPRM published on October 20, 1988, EPA is proposing to further define the scope of the Bevill exclusion with respect to mineral processing wastes. Specifically, the Agency is proposing to remove from the exclusion all mineral processing wastes except for six wastes proposed to be retained within the temporary exclusion and 33 other wastes proposed to be conditionally retained pending collection of data necessary to evaluate hazard. Thus, a two-stage rulemaking process is necessary in order for the Agency to complete determinations of Bevill exemption status for mineral processing wastes: one stage for wastes that the Agency already has adequate data to make such determinations, and a second stage for those for which insufficient data are available.

All mineral processing wastes, other than the 39 wastes referred to above, that exhibit one or more of the characteristics of hazardous waste would become subject to the requirements of Subtitle C of RCRA if today's rule is promulgated as proposed. All wastes retained within the Bevill exclusion when the two stages of this rule are promulgated will be studied in a Report to Congress pursuant to section 8002(p) of RCRA prior to a determination of their final regulatory status.

DATES: EPA will accept public comments on this proposal until May 31, 1989. The Agency will hold a public hearing on May 23, 1989 from 9:00 a.m. to 5:00, unless concluded earlier; see the section titled "Public Participation" for details.

ADDRESS: Those wishing to submit public comments for the record must send an original and two copies of their comments to the following address: RCRA Docket Information Center (OS-305), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Place the docket #F-89-MWRP-FFFFF on your comments.

The OSW docket is located in room M2427 at EPA headquarters. The docket is open from 9:00 to 4:00 Monday through Friday, except for Federal holidays. Members of the public must make an appointment to review docket materials. Call (202) 475-9327 for appointments. Copies cost $0.15/page.

FOR FURTHER INFORMATION CONTACT: RCRA/Superfund Hotline at (800) 424-9346 or (202) 382-3000 or Dan Derkics, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-3608.

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I. Overview

Section 3001(b)(3)(A)(ii) of the Resource Conservation and Recovery Act (RCRA) excludes "solid waste from the extraction, beneficiation and processing of ores and minerals" from regulation as hazardous waste under Subtitle C of RCRA, pending completion of certain studies by EPA. In 1980, the Agency interpreted this exclusion (on a temporary basis) to encompass all "solid waste from the exploration, mining, milling, smelting, and refining of ores and minerals" (45 FR 76619, November 19, 1980). In July, 1988, a Federal Court of Appeals (*Environmental Defense Fund* v. *EPA*, 852 F.2d 1316 (D. C. Cir. 1988), *cert. denied*, 109 S. Ct. 1120 (1989) (*EDF* v. *EPA*)) *found that this exclusion is based upon the "special waste" concept first proposed by EPA in 1978 (43 FR 58946) and that*

> Congress intended the term "processing" in the Bevill Amendment to include only those wastes from processing ores or minerals that meet the "special waste" concept, that is "high volume, low hazard" wastes. 852 F.2d at 1328-29.

In compliance with this Court decision, on October 20, 1988 EPA published a proposal to further define the scope of the section 3001(b)(3)(A)(ii) of RCRA. (See 53 FR 41288) In the October 20, 1988 proposal, EPA presented a criterion for defining mineral processing wastes and a two-part criterion for identifying which mineral processing wastes are high volume, but proposed to defer judgment on the hazard posed by high volume mineral processing wastes until preparation of a required report to Congress. The Agency also applied the processing and volume criteria to its available data on mineral processing wastes, and identified 15 which it believed met the criteria, and which the Agency therefore proposed to retain within the exclusion and study for the report to Congress:

1. Slag from primary copper smelting
2. Process wastewater from primary copper smelting/refining
3. Blowdown from acid plants at primary copper smelters
4. Bleed electrolyte from primary copper refining
5. Slag from primary lead smelting
6. Blowdown from acid plants at primary zinc smelters
7. Process wastewater from primary zinc smelting/refining
8. Red and brown muds from bauxite refining
9. Phosphogypsum from phosphoric acid production
10. Slag from elemental phosphorus production
11. Iron blast furnace slag
12. Air pollution control dust/sludge from iron blast furnaces
13. Waste acids from titanium dioxide production
14. Air pollution control dust from lime kilns
15. Slag from roasting/leaching of chromite ore.

Today's proposal substantially revises and supplements the NPRM published on October 20, 1988. Based on comments received on the October 20, 1988 NPRM, EPA believes that, in spite of the technical difficulties associated with

developing, and the very limited data available for applying, a criterion for evaluating the hazard of mineral processing wastes prior to the preparation of a report to Congress, such a criterion is required in order to identify those mineral processing wastes that are "special wastes". As a result, today's proposal includes a criterion for identifying mineral processing wastes that are clearly not low hazard and, therefore, not "special wastes" even if they are high volume. This criterion evaluates the corrosivity of the waste and the mobility and toxicity of constituents in the waste. Today's proposal also provides some clarification of the criterion used to define mineral processing wastes and modifies the volume criterion by deleting the total national volume test.

Based on these changes to the "special waste" criteria and the information provided in public comments, EPA is today proposing to remove from the Bevill exclusion all but 39 mineral processing wastes. Of the 39 mineral processing wastes being proposed today to be retained within the exclusion, the Agency believes that the following six wastes satisfy all of the "special waste" criteria described in today's proposal:

1. Slag from primary copper smelting
2. Slag from primary lead smelting
3. Red and brown muds from bauxite refining
4. Phosphogypsum from phosphoric acid production
5. Slag from elemental phosphorus production
6. Furnace scrubber blowdown from elemental phosphorus production.

In compliance with a Court ordered deadline, EPA intends to take final action on the Bevill status of these six wastes as well as the criteria used to determine which mineral processing wastes are "special wastes" by August 18, 1989. This final rule will complete the first stage of rulemaking regarding the Bevill status of mineral processing wastes.

The other 33 wastes are being proposed to be *conditionally* retained within the exclusion because they are mineral processing wastes that the Agency believes satisfy the volume criterion but for which the Agency does not currently have adequate data to evaluate compliance with the hazard criterion. The wastes that the Agency is today proposing to conditionally retain within the exclusion are:

1. Barren filtrate from primary beryllium processing
2. Raffinate from primary beryllium processing
3. Bertrandite thickener sludge from primary beryllium processing
4. Process wastewater from primary cerium processing
5. Ammonium nitrate process solution from primary lanthanide processing
6. Roast/leach ore residue from primary chrome ore processing
7. Gasifier ash from coal gasification
8. Cooling tower blowdown from coal gasification
9. Process wastewater from coal gasification
10. Bleed electrolyte from primary copper refining
11. Process wastewater from primary copper smelting/refining
12. Slag tailings from primary copper smelting
13. Calcium sulfate wastewater treatment plant sludge from primary copper smelting/refining
14. Furnace off-gas solids from elemental phosphorus production
15. Process wastewater from elemental phosphorus production
16. Fluorogypsum from hydrofluoric acid production
17. Air pollution control dust/sludge from iron blast furnaces
18. Iron blast furnace slag
19. Process wastewater from primary lead smelting/refining
20. Air pollution control scrubber wastewater from light weight aggregate production
21. Wastewater treatment sludge/solids from light weight aggregate production
22. Process wastewater from primary magnesium processing by the anhydrous process
23. Process wastewater from primary selenium processing
24. Process wastewater from phosphoric acid production
25. Wastes from trona ore processing
26. Basic oxygen furnace slag from carbon steel production
27. Leach liquor from primary titanium processing
28. Sulfate processing waste acids from titanium dioxide production
29. Sulfate processing waste solids from titanium dioxide production
30. Chloride processing waste acids from titanium and titanium dioxide production
31. Chloride processing waste solids from titanium and titanium dioxide production
32. Blowdown from acid plants at primary zinc smelters
33. Process wastewater from primary zinc smelting/refining.

In compliance with a Court ordered deadline, EPA plans to complete a second stage of rulemaking regarding the Bevill exemption status of mineral processing wastes. This will consist of a proposal by September 15, 1989 that identifies the proposed status of these 33 wastes with respect to the hazard criterion, as well as publication of a final rule by January 15, 1990 that identifies which of these 33 wastes will be retained within and which will be removed from the regulatory exclusion provided by the Bevill Amendment.

Those mineral processing wastes that remain temporarily excluded as of January 15, 1990 will be studied for a report to Congress that EPA is required by a Court order to prepare by July 31, 1990. Six months after submission of the report to Congress, EPA will make a determination as to whether Subtitle C regulation of these wastes is warranted.

If today's proposal is promulgated, all mineral processing wastes other than the 39 wastes listed above will be *permanently* removed from the Bevill exclusion. That is, the exclusion from Subtitle C regulation currently provided by section 3001(b)(3)(A)(ii) of RCRA would apply only to these 39 wastes after the effective date of the August 18, 1989 rulemaking. After the second stage of this rulemaking is completed, some or all of the 33 conditionally retained mineral processing wastes may be found to not be low hazard and may, accordingly, be removed from the exclusion.

Any commenters on today's proposal who believe that the Agency should add to or delete from the group of 39 wastes that are today proposed to either be retained within the temporary exclusion from Subtitle C requirements or conditionally retained pending collection of additional data must provide information that at least demonstrates the status of the waste (to be added or deleted) with respect to the mineral processing operation and high volume criteria. In the absence of compelling additional information that indicates that there are other high volume mineral processing wastes, the Agency plans to retain, at most, only the 39 mineral processing wastes identified above within the Bevill exclusion for "solid wastes from . . . processing ores and minerals".

The Agency is interested in receiving data and comments on all aspects of today's proposal. Of particular interest, however, are the following areas:

(1) Analytical data on the physical, chemical and radiological nature of the 33 proposed conditionally excluded wastes;

(2) The appropriateness of the toxicity and pH tests for identifying "low hazard" mineral processing wastes; and

(3) Whether the definition of "mineral processing" should be further narrowed beyond that contained in today's proposal. For example, should "mineral processing" be considered confined to only those mineral processing operations that are co-located with extraction and beneficiation operations?

II. Background

A. History of the Mining Waste Exclusion for Mineral Processing Wastes

1. Introduction

Since the proposal of the first regulations under the Resource Conservation and Recovery Act (RCRA) in 1978, mineral processing wastes have been subject to a different regulatory framework than most other categories of potentially hazardous wastes. In the 1978 proposed rule implementing Subtitle C of RCRA, EPA introduced the "special waste" concept, which was based on the belief that these "special wastes" should, on a provisional basis, be regulated less stringently than other wastes because they were produced in very large volumes, were thought to pose less of a hazard than other wastes, and were generally not amenable to the management practices required by the technical standards being proposed for other hazardous wastes.

In 1980, Congress made this "special waste" concept a statutory requirement when it enacted the Bevill Amendment as part of the 1980 amendments to RCRA. The Bevill Amendment temporarily exempted fossil fuel combustion wastes, oil and gas field production wastes, mining and mineral processing wastes, and cement kiln dust waste from potential regulation as hazardous wastes under Subtitle C of RCRA. Most of the continuing controversy over the regulation of mineral processing wastes results from different interpretations of the legislative intent with regard to the Bevill Amendment, and of the subsequent Court decisions.

This section provides a summary and analysis of the history of the Bevill exclusion, from the initial enactment of RCRA through the present.

2. The Resource Conservation and Recovery Act and Proposed Subtitle C Regulations (1976–1980)

On October 21, 1976, Congress enacted the Resource Conservation and Recovery Act (Pub. L. 94–580). Section 3001 of RCRA mandated that the EPA Administrator "promulgate regulations identifying characteristics of hazardous waste, and listing particular hazardous wastes which shall be subject to the provisions of this subtitle." Section 3004 required the Administrator to promulgate standards applicable to owners and operators of hazardous waste treatment, storage, and disposal facilities. Congress did not explicitly address the regulation of mining and mineral processing wastes, but Section 8002(f) instructed the EPA Administrator to conduct:

> * * * a detailed and comprehensive study on the adverse effects of solid wastes from active and abandoned surface and underground mines on the environment, including, but not limited to, the effects of such wastes on humans, water, air, health, welfare, and natural resources * * *"

This study requirement was based upon the Congressional recognition that mining wastes were generated in larger quantities than any other type of solid waste, and that historical and, perhaps, contemporary mining wastes management practices, could pose danger to human health and the environment. Mandated study factors included sources and volumes of wastes generated, present and alternative disposal practices, potential danger posed by surface runoff and fugitive dust emissions, the cost of waste management alternatives, and the potential for use of discarded materials as secondary sources having mineral value. The House report (No. 94–1491) accompanying the RCRA bill indicates that the focus of EPA's inquiry was to be the environmental and technical adequacy of current waste management practices, with economic practicality being a secondary consideration.

On December 18, 1978, EPA proposed its regulations for managing hazardous wastes under Subtitle C of RCRA (43 FR 58946). These proposed regulations introduced the "special wastes" concept, upon which most of the debate concerning the regulatory status of mineral processing wastes has been focused. "Special waste" referred to wastes that were generated in large volumes, were thought to pose less risk to human health and the environment than other hazardous wastes, and for which the proposed technical requirements implementing Subtitle C might not be appropriate. EPA identified waste materials from the "extraction, beneficiation, and processing of ores and minerals" as one of six such "special wastes" under the proposed regulations.[1] EPA proposed to defer most of the RCRA Subtitle C requirements for these special wastes until information could be gathered and assessed that would enable EPA to determine the most appropriate regulatory approach.

In the fall of 1979, EPA completed a draft background document that outlined the development of EPA's methodology for determining which materials qualified as "special wastes" (Introduction and Criteria for Special Waste, November 2, 1979, EPA Docket #A–DI–SS0062). The background document presents the eight criteria that were used to develop the original list of "special wastes" for the December 18, 1978 proposed Subtitle C regulations:

1. Limited information on waste characteristics;
2. Limited information on the degree of human health and environmental hazard posed by disposal;
3. Limited information on waste disposal practices and alternatives;
4. Very large volumes and/or large number of facilities;
5. Limited movement of wastes from the point of generation;
6. Few, if any, documented damage cases;
7. Apparent technological difficulty in applying current Subpart D[2] regulations to the waste because of volumes involved at typical facilities; and
8. Potential high economic impact if current Subpart D regulations are imposed.

The background document states further that criteria 1, 2, 3, 4, and 7 were the driving forces in the decision-making process for the 1978 proposed Subtitle C regulations, while the other criteria were met to some degree for individual wastes.

EPA received many public comments on the proposed Subtitle C regulations. The background document indicates that the Agency incorporated many of these comments, as well as its own continuing analysis, when it revised the criteria used to designate "special wastes." The concluding section discussed the four criteria that EPA, at that point, intended to use to evaluate petitions to designate a waste as a "special waste:"

1. The waste is or is anticipated to be generated and disposed in large volumes. This determination would be based on the national volume generated per year; the projected volume of waste generated over the next decade; the volume of waste disposed at a typical disposal facility; and extraneous siting restrictions on the generator.

2. The waste should be uniform, i.e., the waste exhibits the same characteristics whenever disposed, and is amenable to being predominantly managed without being mixed with other wastes.

3. The waste must pose only a low potential hazard to human health and the environment. This determination would be based on the class of hazard of the waste; the chemical composition and physical characteristics of the waste; results of the application of 40 CFR 250 Subpart A [now 40

[1] The other five "special wastes" were cement kiln dust waste; utility waste; phosphate rock mining, beneficiation, and processing waste; uranium mining waste; and gas and oil drilling muds and oil production brines.

[2] 40 CFR Part 250, Subpart D contained the proposed RCRA Section 3004 management standards (43 FR 59008). These requirements are now found in final form at 40 CFR Parts 264–266).

CFR Part 261] procedures for determining hazardous characteristics and other available testing information (although ignitable, corrosive, or reactive wastes would be acceptable as special wastes at the discretion of the Administrator); and information on documented past damage cases.

4. Due to lack of information on current treatment, storage, and disposal practices and alternatives, the Agency would be unable to propose standards for control of the waste.[3]

Using the revised list of four criteria, the Agency considered expanding the list of six "special wastes" in the 1978 proposed Subtitle C regulations to a total of eleven:

1. Cement kiln dust waste;
2. Utility waste;
3. Phosphate mining, beneficiation, and processing waste;
4. Uranium mining waste;
5. Wastes from the extraction, beneficiation, and processing of ores and minerals other than phosphate rock and uranium ore;
6. Gas, oil, and geothermal drilling and production wastes;
7. Shale oil industry wastes;
8. Red muds [from bauxite refining];
9. Black muds [from bauxite refining];
10. Coal mining waste; and
11. Dredge spoils.

Though the special waste category was never promulgated, it is clear that EPA was responsible for amplifying the original study requirement under section 8002(f) into a regulatory concept, that the Agency had several specific criteria (principally low hazard, high volume, and infeasibility of Subtitle C technical requirements) that it employed to evaluate potential special wastes, and that the group of wastes that might have received the temporary exemption from full Subtitle C regulation was to be both finite and relatively small. The concept of and means of identifying special wastes continue to be relevant to and serve as the basis for the present rulemaking.

3. Final Subtitle C Regulations and the Solid Waste Disposal Act Amendments of 1980, Including the Bevill Amendment (1980)

Throughout 1980, Congress was conducting hearings to substantially amend RCRA. On February 20, 1980, Rep. Thomas Bevill (AL) offered an amendment which, among other things, amended section 3001 to temporarily exempt three categories of waste from Subtitle C regulation:

- Fly ash waste, bottom ash waste, slag waste, and flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels;
- Solid waste from the extraction, beneficiation, and processing of ores and minerals, including phosphate rock and uranium ore; and
- Cement kiln dust waste.

These wastes were to remain exempt from Subtitle C regulation until completion of the studies required under sections 8002(f) and 8002(p), the latter of which was to be added to RCRA (these sections are discussed below).

From his statements before the Committee on Interstate and Foreign Commerce, it is apparent that Rep. Bevill offered his amendment primarily to prevent regulatory disincentives for the development of the nation's coal resources. Rep. Bevill stated that "the House [would] not allow EPA to take steps that will discourage the use of coal." Rep. Bevill noted that EPA "has very little information on the composition, characteristics, and degree of hazard posed by these [i.e., coal] wastes" and that the Agency believed that any potential hazards presented by the materials are relatively low.

Rep. Bevill also claimed that existing Federal and State regulation would sufficiently regulate wastes from the combustion of coal and other fossil fuels while EPA was undertaking the required studies. During the hearing, several other representatives spoke in favor of the Bevill amendment, specifically concerning refuse-derived fuel (Rep. Horton-NY), fly ash and slag from coal (Rep. Findley-IL), oil and gas muds and brines (Rep. Moffett-CT), and large volume coal wastes (Rep. Rahall-WV; Rep. Staggers-WV). Rep. Florio (NJ) submitted for the record results of EPA studies that documented the known health risks associated with radioactive uranium and phosphate wastes.

The discussion of mining wastes as a part of the Bevill Amendment was limited to brief comments by Rep. Williams (MT), who stated that wastes from mineral production should not be subject to Subtitle C regulation at that time. As an example of the limited potential hazard of these wastes, Rep. Williams paraphrased a National Academy of Sciences study, stating that slag waste generated by the smelting of copper

> . . . is basically inert and weathers slowly. The slag produced 2,500 years ago at King Solomon's mines north of Eliat, Israel, has not changed perceptibly over time.

Rep. Williams then continued

> Should wastes such as smelting slag be subject to stringent regulations at this time? I think not—not until a thorough study is conducted by the responsible agency which clearly proves the need for additional regulation. (Emphasis added.)

Based on Rep. Bevill's comments, it is apparent that the fundamental purpose of the amendment was to limit the impact of Subtitle C regulation on the coal industry (the Senate version of this bill, however, emphasized oil and gas field production wastes), at a time when the nation and the Congress were extremely concerned about energy self-sufficiency. Although the Bevill Amendment, as read into the record during the hearing, explicitly refers to mineral processing wastes, Rep. Bevill did not mention these wastes or respond to Rep. Williams' statements.

Almost all of the major components of the Bevill amendment were originally conceived by EPA. The Bevill amendment made the Agency's planned activities, as expressed in the 1978 proposed Subtitle C regulations and the 1979 "Special Waste" background document, statutory requirements. In fact, with very few exceptions, all of the specific provisions of the Bevill Amendment were lifted (often verbatim) from EPA rulemakings and related documents.

Furthermore, it is clear from the legislative history that the Bevill Amendment was designed to defer regulation of those wastes which EPA had defined as special wastes. Congressman Bevill referred specifically to EPA's 1978 special waste proposal in his explanation of the amendment, noting that EPA had asserted

> it did not have data on the effectiveness of current or potential waste management technologies or the technical or economic practicability of imposing its proposed regulations. In the same [12/18/78] announcement, EPA also stated that it believed that any potential hazards presented by the materials are relatively low.

26 *Cong. Rec.* 3361 (1980). Other Congressmen also referred to the Bevill wastes in terms of the EPA "special waste" concept. Congressmen Santini, Staggers, and Findley all supported the amendment on the basis that it would defer regulation of "special wastes" until EPA had completed the required study. *Id.* at 3348, 3349, 3363, 3365. Congressman Williams of Montana, in explaining why smelting slag should be studied (see above), noted that the Bevill Amendment "would direct [EPA] to evaluate *certain high volume, low toxicity* wastes so as to assure a reasoned set of regulations by which to manage these wastes." *Id.* at 3364. Clearly, the discussions on the floor of the House imply Congressional intent to incorporate the "special waste" concept into the Bevill Amendment definitions of

[3] EPA also considered and rejected a number of criteria not included in the original list, including: adequacy of current waste management practices and resource recovery potential.

excluded wastes. (See also 852 F.2d at 1327).

On May 19, 1980, EPA promulgated final regulations under Subtitle C of RCRA which addressed, among other things, "solid waste from the extraction, beneficiation, and processing of ores and minerals" (45 FR 33066). In promulgating these regulations, EPA decided to withdraw rather than finalize the "special waste" category. The Agency's stated basis for this decision was twofold:

(1) The thresholds for the (EP) extraction procedure toxicity and corrosivity characteristics tests (which are used to identify hazardous wastes subject to Subtitle C regulation) had been significantly relaxed. As a result, the number of wastes in general, and "special wastes" in particular, that would be potentially subject to Subtitle C regulation was greatly reduced.

(2) The Agency had incorporated more flexibility, through phasing and standard-setting, in Parts 264 and 265 (which contain the regulations for permitted and interim status owners/operators of hazardous waste facilities). Thus, a RCRA permit writer had the ability to take into account site-specific environmental characteristics and management practices (i.e., "special waste" study factors) in establishing permit requirements.

As a result, the Agency concluded that these changes "accomplish the objectives of, and eliminate the need for, a special solid waste category." When EPA eliminated the "special waste" concept, it was aware of Congress' intention to exempt mining and mineral processing and other proposed "special" wastes from Subtitle C regulation because passage of the Solid Waste Disposal Act Amendments of 1980 (including the Bevill Amendment) was expected (Senate and House versions had been passed on June 4, 1979 and February 20, 1980, respectively).

On October 12, 1980, Congress enacted the Solid Waste Disposal Act Amendments of 1980 (Pub. L. 96–482), which added section 3001(b)(3)(A)(ii) (the Bevill Amendment) to RCRA. This section temporarily prohibits EPA from regulating, among other wastes, "solid waste from the extraction, beneficiation, and processing of ores and minerals, including phosphate rock and overburden from the mining of uranium ore" as hazardous waste under Subtitle C of RCRA until at least six months after EPA completes and submits to Congress the studies required by section 8002(f), and by section 8002(p), which was also added to RCRA by the 1980 amendments. Section 8002(p) required the Administrator to study the adverse effects on human health and the environment, if any, of the waste from the disposal and utilization of "solid waste from the extraction, beneficiation, and processing of ores and minerals, including phosphate rock and overburden from the mining of uranium ores," and submit a Report to Congress on its findings by October 1983. The 1980 amendments also added section 3001(b)(3)(C), which requires the Administrator to make a regulatory determination, within six months of the completion of the section 8002 studies, whether to regulate mining wastes under Subtitle C of RCRA.

On November 19, 1980, EPA published an interim final amendment to its hazardous waste regulations to reflect this mining waste exclusion (45 FR 76618). The regulatory language incorporating the exclusion was identical to the statutory language, except EPA added the phrase "including coal." In the preamble to the amended regulation, however, EPA tentatively interpreted the exclusion to include "solid waste from the exploration, mining, milling, smelting, and refining of ores and minerals." The preamble made it clear that the Agency was interpreting the scope of the exclusions very broadly and that, over the next 90 days, EPA intended to review the legislative history of the Bevill amendment and the public comments received in response to the interpretation. The preamble indicated that based on this review, EPA would probably narrow the scope of the exclusion.

4. Litigation, the Hazardous and Solid Waste Amendments of 1984, and Bevill Exclusion Reinterpretations (1981–1988)

As noted above, the Solid Waste Disposal Act Amendments of 1980 amended section 3001 to require the EPA Administrator to make a regulatory determination regarding the wastes temporarily excluded from Subtitle C regulation within six months of submitting the required Report to Congress. EPA was required to submit the Report to Congress by October 1983. In 1984, the Concerned Citizens of Adamstown and the Environmental Defense Fund sued EPA for failing to complete the section 8002 studies and the regulatory determination by the statutory deadlines (*Concerned Citizens of Adamstown* v. *EPA* No. 84–3041, D.D.C., August 21, 1985). EPA explained to the District Court for the District of Columbia that the Agency planned to propose to "reinterpret" the scope of the mining waste exclusion so that it would encompass fewer wastes. Therefore, EPA suggested two schedules to the court: one for completing the section 8002 studies and submitting the Report to Congress, and one for proposing and taking final action on the reinterpretation. On August 21, 1985, the court ordered EPA to meet these two schedules; first, the Agency was to complete the section 8002 studies and Report to Congress by December 31, 1985, and to publish the regulatory determination by June 30, 1986; and second, EPA was to propose to reinterpret the Bevill exclusion and subsequently, to take final action on the proposed reinterpretation by September 30, 1986.

EPA submitted the Report to Congress on December 31, 1985. The Report to Congress provided information on sources and volumes of waste, disposal and utilization practices, potential danger to human health and the environment from mining practices, and evidence of damages. EPA focused on the mining industry segments that produced and/or concentrated metallic ores, phosphate rock, or asbestos.

On July 3, 1986, EPA issued its regulatory determination for the universe of mining wastes covered by the Report to Congress (51 FR 24496). The regulatory determination concluded that Subtitle C regulation of the wastes studied in the Report to Congress (i.e., extraction and beneficiation wastes) was not warranted at that time. This conclusion was based on EPA's belief that aspects of the Subtitle C standards were likely to be environmentally unnecessary, technically infeasible, or economically impractical when applied to mining waste. EPA announced its intention to develop a program for mining waste under Subtitle D of RCRA.

The July 3, 1986 regulatory determination was subsequently challenged in court (*Environmental Defense Fund* v. *EPA*, 852 F.2d 1309 (D.C.Cir. 1988)). The Court of Appeals upheld EPA's regulatory determination for extraction and beneficiation wastes.

In the interim, Congress enacted the Hazardous and Solid Waste Amendments to RCRA in 1984. These amendments added new requirements applicable to owners and operators of facilities that treat, store, or dispose hazardous waste, and included minimum technical standards for the design, construction, and operation of waste management units, land disposal restrictions, and corrective action requirements for continuing releases. In developing these new requirements, Congress considered their feasibility with respect to and potential impact on the management of certain categories of wastes. This concern was embodied in what was to become section 3004(x) of RCRA, the so-called "Simpson Amendment," which allowed the EPA Administrator to modify the Subtitle C

technical standards for managing mining wastes, utility waste, and cement kiln dust waste, as long as protection of human health and the environment was assured.

In the floor debate on the Simpson Amendment, the Senate considered remarks concerning the types of wastes that would be eligible for the special status conferred by the amendment. Sen. Jennings Randolph (WV) read into the record the description of mining wastes that was contained in the committee report on the HSWA amendments. In this report, "solid wastes from mining and mineral beneficiation and processing" are described as "primarily waste rock from the extraction process, and crushed rock, commonly called tailings" The report continues by stating

> [t]he 1980 amendments covered wastes from the *initial* stages of mineral processing, where concentrations of minerals of value are greatly increased through physical means, before applying *secondary* processes such as *pyrometallurgical or* electrolytic *methods. Smelter slag might also be included. . .* These wastes were considered "*special wastes*" under the 1978 proposed regulations as being of large volume and relatively low hazard. (Emphasis added.)

The remaining discussion in the excerpt from the committee report focuses on the potential difficulties of managing the huge volumes of waste rock and tailings associated with mineral exploitation under the new minimum technology standards under debate.

Thus, although the Congress explicitly considered the special study wastes in crafting the provisions of HSWA, there is nothing in either the amendments themselves or in the legislative record supporting them to suggest that Congress construed the term "mineral processing" broadly, i.e., to include wastes that are not "special wastes."

In keeping with its agreement in the *Adamstown* case, on October 2, 1985, EPA also proposed to narrow the scope of the Bevill exclusion (50 FR 40292). In preparing the proposed mining waste exclusion, EPA implicitly applied the "high volume, low hazard, special waste" concept from EPA's 1978 proposed hazardous waste regulations. The proposed rulemaking would have eliminated from the mining waste exclusion most wastes from the processing of ores and minerals; EPA proposed to retain bauxite refining muds, phosphogypsum from phosphoric acid plants, and slag from primary metal smelters and phosphorus reduction facilities within the Bevill exclusion. In the preamble, EPA stated that Congressional intent supported the Agency's special waste concept. The proposed rule did not, however, outline the criteria that EPA used to determine high volume or low hazard.

In response to the proposed reinterpretation, many commenters "nominated" additional wastes that they believed fit the "special waste" criteria, and therefore should also be excluded from Subtitle C regulation as "processing wastes." Because EPA had not explicitly defined the terms "high volume" or "low hazard" in the October 2, 1985 proposal, the Agency was unable to determine the regulatory status of these nominated wastes. EPA could not infer definitions for these terms based upon the four wastes listed in the proposal as meeting the "special waste" criteria. The public comments on the proposal and the Agency's analysis indicated that the proposed reinterpretation could not be finalized because it did not set out "practically applicable" criteria for distinguishing "processing" (i.e., high volume, low hazard ore and mineral processing residuals) from non-processing wastes (i.e., non-excluded) wastes. Moreover, the Agency was unsure whether such criteria could be developed. Therefore, faced with the court-ordered deadline for final Agency action in Adamstown, EPA withdrew the proposal on October 9, 1986 (51 FR 36233). As a consequence, the interpretation of the mining waste exclusion established in the November 19, 1980 rulemaking notice remained in effect.

The Agency's decision to withdraw its proposed reinterpretation of the mining waste exclusion was subsequently challenged in court (*Environmental Defense Fund* v. *EPA*, 852 F.2d 1316 (D.C. Cir. 1988), *cert. denied* 109 S. Ct. 1120 (1989) (*EDF* v. *EPA*)). In this case, the petitioners contended, and the Court of Appeals agreed, that EPA's withdrawal of its proposed reinterpretation of the Bevill Amendment was arbitrary and capricious because it reaffirmed an "impermissibly over-broad interpretation" of the Bevill Amendment. *EDF* v. *EPA*, 852 F.2d at 1326.

In reaching this decision, the Court found that the words "waste from * * * processing of ores and minerals" do not convey a self-evident, accepted meaning. *Id.* at 1327. Therefore, the Court reviewed the structure and the legislative history of the Bevill Amendment to ascertain the intent of Congress. The Court found that "[t]he structure of the Bevill Amendment suggests that the term "solid waste from the * * * processing of ores and minerals" should be interpreted in a manner consistent with the concept of large volume wastes. *Id.* The Court also decided that "[t]he legislative history of the Bevill Amendment establishes that the key to understanding Congress' intent is the concept of "special waste" articulated in the regulations proposed by EPA on December 18, 1978 following the enactment of RCRA." *Id.* See 43 FR 58911 (1978) and 50 FR 40293 (1985).

In explaining this decision, the Court cited statements made by members of Congress during the legislative consideration of the exclusion and the description of the provision in the Conference Report accompanying the legislation. Based on these indications of Congressional intent, the court concluded that

> it is clear that Congress did not intend the mining waste exclusion to encompass all wastes from primary smelting and refining. On the contrary, Congress intended the term "processing" in the Bevill Amendment to include only those wastes from processing ores or minerals that meet the "special waste" criteria, that is, "high volume, low hazard" wastes. 852 F.2d at 1328–29.

Thus, when the Agency withdrew its October 2, 1985, proposed reinterpretation of the mining waste exclusion, which was based on implicit "special waste" criteria, EPA by default reverted to its November 19, 1980, interpretation of the exclusion, which did not distinguish between high volume, low hazard processing wastes and other processing wastes. As a consequence, the number of temporarily excluded processing wastes remained very large. The Court ruled that this result was inconsistent with Congressional intent. Therefore, the Court ordered EPA to propose, by October 15, 1988, a specific list of mineral processing wastes that meet the criteria of high volume and low hazard, and thus remain temporarily excluded from Subtitle C regulation. 852 F.2d at 1331.

5. Analysis and Implications

From the foregoing, it is clear that EPA has considerable latitude in defining the scope of the Bevill exclusion for mineral processing wastes, within the boundaries of Congressional intent. The legislative history of the Bevill Amendment indicates that the Congress was relying very heavily upon EPA's "special waste" concept when it created the exclusion, and that it therefore implicitly accepted the Agency's ideas regarding the definition of special wastes, as well as the importance of the study factors that were ultimately written into the RCRA statute. This central fact has several

important implications for how EPA can and should respond to the Appeals Court directive to modify the scope of the Bevill exclusion for mineral processing wastes.

The first is that, contrary to the assertions of several commenters, there is no basis for concluding that the Congress intended the scope of the Bevill exclusion for mineral processing wastes to be broad. As noted above, EPA had identified a small number of special wastes as worthy of special study in 1978, and clearly had no intention of studying more than a few other materials when it prepared the background document for the special wastes concept. For its part, the Congress did little to indicate that it wanted EPA to expand the intended scope of the study requirement when it considered the issue in 1980. The only suggested departure from EPA's original short list of wastes is that metal smelting slags also be included, based upon the remarks of Rep. Williams, which were never challenged on the House floor or subsequently. Therefore, and in keeping with the Appeals Court directive, EPA can and should significantly narrow the scope of the Bevill exclusion for mineral processing wastes.

Moreover, as discussed at length in the Appeals Court decision that precipitated the current rulemaking, EPA is obliged to consider whether candidate wastes are high volume and low hazard in making Bevill mineral processing waste exclusion decisions. These two factors are, and have always been, the key elements in identifying special wastes. High volume is the principal indicator of whether a particular waste is amenable to management under Subtitle C of RCRA. A consideration of hazard is necessary to identify and remove from the exclusion wastes that may pose risk or hazard to such a great extent or magnitude that they cannot be considered "special wastes," irrespective of volume. There is, however, no statutory directive or legislative or regulatory guidance addressing the specific components of the necessary high volume and low hazard criteria. Therefore, EPA is free to use its discretion in developing and applying these criteria.

EPA requests comment on its approach for defining the scope of the Bevill mineral processing waste exemption, in light of the legislative history discussed above. In particular, the Agency has considered, and solicits comments on, whether the scope of the exemption should be narrowed to those wastes that are both generated at mineral processing operations that are co-located with extraction and beneficiation operations and meet the "special waste" criteria.

B. Summary of the October 20, 1988 NPRM

In compliance with the Court order in *EDF* v. *EPA*, on October 20, 1988, EPA published a new proposed reinterpretation of the Bevill exclusion and listed 15 specific high volume processing wastes that the Agency designated as "special wastes" based on criteria discussed in the proposal. (See 53 FR 41288.) Under the proposal, these wastes would remain within the Bevill exclusion and hence be studied in a Report to Congress and be subject to a subsequent regulatory determination pursuant to section 3001 of RCRA.

In the proposal, EPA outlined the criteria it used to determine whether a mineral processing waste was a "special waste." The Agency examined three types of criteria in selecting the specific wastes to be retained within the Bevill exclusion: (1) a criterion for identifying wastes from ore and mineral "processing"; (2) a criterion for identifying "high volume" wastes from ore and mineral processing; and (3) a criterion for identifying "low hazard" wastes from ore and mineral processing.

EPA interpreted the term "solid waste from the . . . processing of ores and minerals" to refer to solid wastes, including pollution control residuals, that are uniquely associated with mineral industry operations and that possess the following attributes:

(1) Follow beneficiation of an ore or mineral (if applicable);

(2) Serve to remove the desired product from an ore or mineral, or beneficiated ore or mineral;

(3) Use feedstock that is comprised of less than 50 percent scrap materials;

(4) Produce either a final mineral product or an intermediate to the final product; and

(5) Do not include operations that combine the product with another material that is not an ore or mineral, or beneficiated ore or mineral (e.g., alloying); fabrication (any sort of shaping that does not cause a change in chemical composition), except for casting of metal anodes and cathodes.

In developing the high volume criterion, EPA decided that any waste generated from the processing of ores or minerals, as defined above, that met either of the following tests would be designated a "high volume" processing waste:

(1) For a specific waste stream arising from mineral processing in any given mineral commodity sector (e.g., primary copper processing), the total quantity of the specific waste generated by all facilities in the United States in any one calendar year from 1982 through 1987 equals more than two million metric tons; or

(2) For a specific waste stream arising from mineral processing in any given mineral commodity sector, the specific waste stream is generated at an average rate (i.e., total quantity of the specific waste generated by all facilities in any one calendar year from 1982 through 1987 divided by the number of facilities generating the waste) of more than 50,000 metric tons per facilities per year.

EPA decided not to include a low hazard criterion for three reasons: (1) The existing data on mineral processing waste characteristics were insufficient to apply a low hazard criterion to these wastes; (2) the existing hazardous waste characteristics tests were inappropriate for mineral processing wastes; and (3) there was no appropriate substitute test for determining low hazard.

As a result, EPA adopted a two-step process for determining the wastes to be retained within the Bevill exclusion. Using the two criteria, EPA determined that the following 15 wastes would remain temporarily exempt from Subtitle C regulation and all other mineral processing wastes would be subject to regulation as hazardous wastes under Subtitle C if they exhibit one or more hazardous characteristics as defined by 40 CFR Part 261:

1. Slag from primary copper smelting
2. Process wastewater from primary copper smelting/refining
3. Blowdown from acid plants at primary copper smelters
4. Bleed electrolyte from primary copper refining
5. Slag from primary lead smelting
6. Blowdown from acid plants at primary zinc smelters
7. Process wastewater from primary zinc smelting/refining
8. Red and brown muds from bauxite refining
9. Phosphogypsum from phosphoric acid production
10. Slag from elemental phosphorous production
11. Iron blast furnace slag
12. Air pollution control dust/sludge from iron blast furnaces
13. Waste acids from titanium dioxide production
14. Air pollution control dust from lime kilns
15. Slag from roasting/leaching of chromite ore

III. Analysis of Public Comments on the 10/20/88 NPRM

In response to the October 20, 1988 NPRM, EPA received many written comments addressing a number of rule-related issues. This section summarizes public comments on the major issues pertaining to the October proposal, and provides, where appropriate, the Agency's tentative reactions to the issues raised. Final EPA responses to the issues discussed herein will be

presented when the Agency promulgates the Bevill special waste criteria (by August 18, 1989).

A. The Definition of "Mineral Processing"

In the preamble to the October 20, 1988 proposed rule, EPA provided criteria for defining and identifying wastes from ore and mineral processing operations. These criteria made it clear that all solid wastes qualifying for exclusion under the Bevill Amendment must originate from a mineral processing operation as defined by the following elements:

(1) Excluded Bevill wastes must be solid wastes as defined by EPA.

(2) Excluded solid wastes must be uniquely associated with mineral industry operations.

(3) Excluded solid wastes must originate from mineral processing operations that:

(a) Follow beneficiation of an ore or mineral (if applicable);

(b) Serve to remove the desired product from an ore or mineral, or from a beneficiated ore or mineral;

(c) Use feedstocks that are comprised of less than 50 percent scrap materials;

(d) Produce either a final mineral product or an intermediate to the final product; and

(e) Do not combine the product with another material that is not an ore or mineral, or beneficiated ore or mineral (e.g., alloying), and do not involve fabrication or other manufacturing activities.

(4) Residuals from treatment of excluded mineral processing wastes must meet the high volume and low hazard criteria in order to retain excluded status.

1. Excluded Bevill Wastes Must Be Solid Wastes as Defined by EPA

The proposed rule requires that any excluded Bevill wastes be solid wastes as defined by EPA. The principal comment regarding this requirement was that the regulatory status of recycled residuals from mineral processing is unclear. Many commenters objected to EPA's characterization of materials that are reused, further processed, and/or recycled as solid wastes. These commenters claimed that materials that are not discarded (e.g., copper slag and wastewater treatment sludge that are resmelted) are not solid wastes, and therefore, should not be considered processing wastes; rather, they should be considered intermediate products. They contended that any other interpretation would disrupt the present recycling and reuse of processing residuals, and dramatically increase disposal costs.

Because of these concerns, commenters recommended that EPA develop regulatory language that removes materials destined for reprocessing or recycling from the definition, and requested, furthermore, that this clarification be in the rule itself rather than in the preamble. Moreover, in keeping with the status of residuals from the treatment of Bevill wastes, some commenters argued that residuals from the recycling of such non-waste material should be afforded excluded status if the residuals meet the high volume and low hazard criteria.

EPA believes that there is nothing in the regulatory history of the Bevill Amendment that indicates that the Agency is expected to or should apply a definition of solid waste that is different than that applied throughout the RCRA program. Therefore, the Agency will continue to use the definition of solid waste in 40 CFR 261.2 to identify materials that are eligible for consideration as special wastes. This definition subdivides secondary materials by material type and recycling activity in order to ascertain whether they are solid wastes. EPA does not accept the commenters' oversimplified premise that materials that are recycled are not "discarded" and therefore are never solid wastes. Recycling activities characterized by elements of discard, such as use constituting disposal or burning of hazardous wastes for energy recovery, are activities that Congress expressly ordered the Agency to either prohibit or regulate. See, e.g., section 3004(q) and (1) of RCRA. At the same time, the Agency has always limited the scope of its definition to avoid asserting authority over in-house recycling operations that are essentially continuations of a manufacturing process. See 50 FR 637–41 (Jan. 4, 1985). EPA has proposed to further limit the definition's scope over these types of activities in response to the opinion of the U.S. Court of Appeals in *American Mining Congress* v. *EPA*, 824 F.2d 1177 (D.C. Cir. 1987). See 53 FR 526–28 (Jan. 8, 1988). Pending further consideration of these issues in the January 8, 1988, rulemaking, the existing definition found at 40 CFR 261.2 (1988) will remain applicable here.

The Agency notes, however, that under certain circumstances, products containing recyclable materials that are produced for use by the general public and that are used in a manner constituting disposal may not be considered solid wastes (see 40 CFR 266.20). Based upon its evaluation of waste management practices for the Report to Congress, EPA will consider whether particular materials that have been retained within the Bevill exclusion might qualify for this exemption from RCRA.

2. Excluded Solid Wastes Must Be Uniquely Associated With Mineral Industry Operations

To be excluded, solid wastes must be uniquely associated with the mineral processing industry. EPA received no significant comments either in support of or in opposition to this criterion.

3. Excluded Solid Wastes Must Originate From Mineral Processing Operations as Defined by the Five Criteria

In general, commenters believed that the attributes used in the proposed rule to define mineral processing were acceptable, although at least one commenter declared that a broader interpretation is supported by the legislative history and prior EPA rulemaking activity.

As discussed at length in the Appeals Court decision that precipitated the current rulemaking, EPA is obliged to consider whether candidate wastes are high volume and low hazard in making Bevill mineral processing waste exclusion decisions. These factors are, and have always been, the key elements in identifying special wastes. Nonetheless, the distinction between mineral processing and non-mineral processing wastes is important. EPA believes that it is abundantly clear that the Congress intended to exclude only wastes generated as a consequence of exploiting a natural resource, not wastes from other industrial activities, even if both occur at the same facility.

a. Operation must follow beneficiation of an ore or mineral (if applicable). The proposed rule defined processing as following beneficiation and provided both a general definition and some examples of beneficiation. Several commenters stated that this definition and discussion of beneficiation do not adequately delineate the boundary between beneficiation and processing. Some commenters requested that EPA utilize the definition of beneficiation used in the Report to Congress on extraction and beneficiation wastes.

The U.S. Bureau of Mines (BOM) commented extensively on the delineation between beneficiation and processing. BOM was primarily concerned with the status of leaching operations, claiming that the definition in the preamble to the proposal did not adequately express EPA's apparent

intent that leaching be considered a beneficiation operation. BOM pointed out that EPA has clearly considered leaching to be a beneficiation operation, as suggested by both the Report to Congress and the development document for effluent limitations for the ore mining and dressing point source category.

As defined in the October 20, 1988 proposal, beneficiation operations, which often precede ore or mineral processing operations, include primarily, but not exclusively, physical operations (e.g., crushing, grinding, sorting, sizing, washing, flotation) that concentrate the valuable constituents from an ore or mineral in preparation for further refinement (e.g., smelting). The solid wastes generated by these beneficiation operations are normally crushed or pulverized rock, or other earthen materials, such as clays or sands. In contrast, processing operations use other means, such as chemical reactions, electrolytic techniques, or pyrometallurgical/thermal processes (e.g., roasting, smelting, calcining) to concentrate or enhance the characteristics of valuable constituents and, thus, differ from beneficiation operations.

A specific exception to this relatively simple distinction between beneficiation and processing is heap, dump, and in-situ leaching, as well as tank and vat leaching. EPA's policy toward leaching, as stated in a previous regulatory determination,[4] is that active leach piles and leach solutions are not wastes, but rather are raw materials used in the production process and intermediate products, respectively. Only leach solutions that escape from the production process are considered wastes while the leaching operation is active.

In light of the regulatory determination, EPA concurs with BOM in its comments about leaching. Accordingly, EPA has modified the proposed definitions of processing and beneficiation, such that heap, dump, *in-situ*, tank, and vat leaching are explicitly defined as beneficiation operations, unless they follow one or more processing operations in the production sequence, in which case they are considered processing operations. To further clarify the distinction between beneficiation and processing for regulatory purposes, today's proposed rule contains language explicitly defining ore and mineral beneficiation operations.

[4] See Regulatory Determination for Wastes From the Extraction and Beneficiation of Ores and Minerals, 51 Fed. Reg. 24496 (July 3, 1986).

b. Operation must serve to remove the desired product from an ore or mineral, or from a beneficiated ore or mineral. The October 20, 1988 proposal identified the purpose of mineral processing as being to remove the desired product from an ore or mineral or beneficiated ore or mineral. Several commenters indicated that this language obscures the regulatory status of certain processing operations (e.g., lightweight aggregate production) whose purpose is to change the characteristics of valuable constituents in ores or minerals without removing or concentrating them. These commenters suggested that EPA modify the processing definition by altering the second attribute to include operations that serve to enhance the desirable properties of, as well as those that remove the desired product from, an ore or mineral.

EPA agrees, and has modified the second attribute of mineral processing accordingly. EPA wishes to clarify the meaning of this attribute by stating that production steps that use heat to alter the chemical composition (as opposed to simply removing waters of hydration) of ores or minerals (or beneficiated ores or minerals) are considered to be mineral processing operations rather than beneficiation operations. Examples include activities such as roasting, smelting, calcining, and other pyrometallurgical techniques, but do not include activities such as drying, which are considered beneficiation operations.

c. Operation uses feedstock that is comprised of less than 50 percent scrap materials. The October 20, 1988 proposal required that at least 50 percent of the feedstock to an operation be ore or mineral, or beneficiated ore or mineral, for the operation to be considered a primary mineral processing operation. This requirement allows mineral processing operations to use recycled materials in their feedstocks while ensuring that non-mineral processing wastes do not receive an unintended regulatory exclusion.

One commenter was opposed to this attribute of the definition, stating that the nature of copper smelting and refining are unrelated to the source of material that is processed, that primary copper smelters and refineries really use a combination of primary and secondary processes, and, therefore, that this attribute should be modified or deleted.

Other commenters sought clarification of this attribute. Most were concerned with what materials are to be included as part of the "primary" feedstock. Commenters claimed that while many feedstocks are not technically classified as ores or minerals or beneficiated ores or minerals, they are "in-process" materials that are derived from ores and minerals, or beneficiated ores or minerals. Consequently, the commenters contended that these materials are not "scrap" materials, but rather are "indigenous" materials that, when used as feedstocks, should be treated identically to ores or minerals or beneficiated ores or minerals. Accordingly, commenters recommended that EPA modify this "50 percent rule" to include, as "primary" feedstocks, these in-process or intermediate materials that are derived from ores and minerals, or beneficiated ores or minerals. Commenters also requested clarification regarding accounting policies (i.e., what operations to include and over what time period to measure when analyzing feedstock percentages). Commenters recommended that the 50 percent rule be applied to an entire plant's operations or to integrated operations within a company; they also argued that the accounting for the 50 percent rule should be on an annual basis.

EPA proposed the 50 percent rule in order to establish an upper bound on the amount of non-ore or mineral (or beneficiated ore or mineral) material that may be present in an operation's feedstock for it to qualify as a mineral processing operation. The Agency recognizes that a large number of feedstocks are used in mineral processing operations, including a broad variety of "in-process" or "intermediate" materials that are derived from ores and minerals, or beneficiated ores or minerals. In the absence of additional data about these materials, however, EPA believes that an upper bound on the amount of non-ore or mineral (or beneficiated ore or mineral) that may be present in a feedstock is essential in order to ensure that wastes from operations that primarily process materials other than ores and minerals are not provided with an exclusion that Congress did not intend. This attribute of the definition affords considerable flexibility to mineral processing operations, in that they are able to accept scrap and intermediate materials in their feedstocks, and still be eligible for Bevill status. At the same time, operations other than primary mineral processing, such as materials recovery or waste treatment, will not be eligible for the Bevill exclusion.[5]

[5] An exception is wastes that satisfy the special waste criteria and result from the treatment of a waste that also satisfies the special waste criteria.

In addition, EPA wishes to clarify this attribute by stating that the 50 percent rule applies to all materials containing the mineral value that enter a process operation, rather than to the total of all materials entering the operation. For example, the 50 percent rule would apply to crushed copper ore (or beneficiated copper ore) and scrap copper used in the feedstock for a copper smelting operation, but coal or natural gas used to fire the furnace would not be included in the calculation. Materials not containing the mineral value (e.g., reducing agents, fluxing agents) are also not included in determining whether a processing operation or waste complies with the 50 percent rule.

With regard to accounting policies, EPA agrees with the comment that the accounting period over which to analyze feedstock percentages should be one year. However, in contrast to the preference of some commenters, the Agency believes that the rule must be applied to individual processing operations rather than to an entire plant's operations. Applying the 50 percent rule to an entire plant's operations would ignore the significant differences in volume and potential hazard that exist between the diverse groups of wastes produced at mineral processing facilities. The Agency wishes to emphasize that it is establishing a one year accounting period to allow for normal fluctuations in the composition of mineral processing operation feedstocks. Wastes generated by operations that utilize ores, minerals, or beneficiated ores or minerals as secondary feedstocks or use them only intermittently are not eligible for Bevill status.

d. Operation produces either a final mineral product or an intermediate to the final product. The definition of processing in the proposed rule requires that, to be eligible for consideration for the Bevill exclusion, the process operation must produce either a final mineral product or an intermediate to the final mineral product. One commenter stated that EPA should follow Congress' intended broad view of the term "processing" and include all stages after beneficiation through production of final products, including all parts of multi-circuit processes.

As indicated earlier, EPA believes that products that are not directly related to mineral processing operations or that are produced after mineral processing is complete do not fall within the scope of the definition intended by Congress. For example, manufacturing ammoniated phosphate fertilizer products, which involves mixing ammonia, a non-mineral material, with mineral processing products, is not considered a mineral processing operation. Manufacturing of finished products, such as copper wire, silver jewelry, and lead weights, is also outside the definition of mineral processing operations. Additional information about the point at which mineral processing ceases and alloying or fabrication begins is provided below.

e. Operation does not combine the product with another material that is not an ore or mineral, or beneficiated ore or mineral (e.g., alloying); and do not involve fabrication or other manufacturing activities. The proposed rule defined the end of mineral processing as the point at which the processed ore or mineral is combined with another material that is not an ore or mineral, or beneficiated ore or mineral, undergoes fabrication, or is subjected to other manufacturing operations. EPA believes that the end point is reached when recovery or enhancement of mineral value(s) ends and manufacturing begins. Some commenters expressed general dissatisfaction with this definition and argued that it significantly narrows the definition of mineral processing wastes eligible for the Bevill exclusion. They contended that Congress intended the exclusion to encompass all wastes generated by mineral processing operations, from the removal of minerals from the ground through creation of a final saleable product. Many comments centered around a particular processing operation and associated wastes that would potentially be removed from the Bevill exclusion if this attribute is included in the final rule.

The purpose of this portion of the definition is to identify the end point of mineral processing operations. The Agency believes that Congress, in adopting the Bevill Amendment, intended to include only those processes that remove, concentrate, and/or enhance values contained in ores and minerals or beneficiated ores and minerals. EPA's view is that manufacturing and alloying operations clearly do not fit into this category.

Instead, EPA, in articulating the special wastes concept, and the Congress, in implicitly basing the Bevill Amendment on this concept, wished to distinguish between operations that: (1) By their nature produce large volumes of waste in retrieving valuable commodities from native materials in which concentrations of the values are relatively low; and (2) conventional manufacturing operations. It is clear from the legislative history that both EPA and Congress intended the "special waste" concept to have a finite scope that did not encompass wastes from operations that produce wastes in volumes similar to other manufacturing operations. Accordingly, EPA has not made any changes to this attribute for today's proposal.

4. Residuals From Treatment of Excluded Mineral Processing Wastes Must Meet the High Volume and Low Hazard Criteria

The October 20, 1988 proposal included, as processing wastes, residuals from the treatment of excluded mineral processing wastes if these residuals also meet the high volume criteria. Apparently, some confusion exists regarding the status of these residuals, as commenters requested both rule language that was already present in the preamble to the proposed rule and additional clarification of rule provisions. Several commenters, for example, stated that the regulatory status of wastewater treatment effluent is unclear and requested that EPA clarify in the final rule that wastes which arise from the treatment of a Bevill Amendment waste fall within the Bevill exclusion.

Commenters also expressed concern regarding the status of wastes that are generated by pollution control equipment; they expressed concern that a strict reading of the five attributes, and the second and fourth attributes in particular, might prevent any pollution control residual from being classified as a processing waste. Several commenters specifically suggested that EPA simply list for study, in the regulation itself, the category "residues from the treatment of all mineral-processing wastes on the preceding list which are generated at a rate greater than the high volume criteria established by EPA." This action, they contended, would make the list more flexible and allow it to address the different types of treatment which may be utilized at different mineral processing operations.

Other commenters suggested that high volume criteria should not be applied to treatment residuals, because, they contended, this action would frustrate the objectives of RCRA and the Bevill Amendment by discouraging waste reduction and the treatment of excluded wastes. They argued that because excluded wastes are the highest volume mining wastes, the most environmental good would come from volume reduction innovations for these waste streams. Therefore, these commenters suggested including on the list for study, in the

regulation itself, "residues from the treatment of all mineral processing wastes on the preceding list regardless of the rate of generation."

EPA believes that the most appropriate interpretation of the term "solid waste from the processing of ores and minerals" should include pollution control residuals as long as the residuals meet the high volume and low hazard criteria required for all excluded wastes.

The Agency believes that by including qualifying mineral processing wastes and pollution control residuals on the list of wastes excluded under the Bevill Amendment, the intent of Congress will be achieved by allowing further study of these high-volume, low-hazard wastes. Pollution control residues would still have to meet both the high-volume and the low-hazard criteria being established by today's proposed rule in order to qualify as excluded special wastes. The ultimate regulatory approach imposed upon the wastes that would be retained within the Bevill exclusion under today's proposed rule will be addressed in EPA's Report to Congress and subsequent regulatory determination.

Moreover, as discussed in more detail below, the Agency is not proposing to apply the high volume and low hazard criteria prospectively, i.e., EPA will define the final scope of the Bevill mineral processing waste exclusion by January 15, 1990. Therefore, application of these criteria will not discourage future waste reduction and the treatment of excluded wastes.

B. The "High Volume" Criterion

The preamble of the October 20, 1988 NPRM articulated an explicit high volume criterion to be used to identify high volume mineral processing wastes. This criterion consisted of two tests, one of which would have to be met for a waste to be considered high volume. The first test was based on the average annual per facility generation rate of a waste, and the second on total annual quantity of a waste generated nationwide. Both tests applied only to individual waste streams produced in any single year between 1982 and 1987. For a complete description of the basis for this criterion, see the original notice published at 53 FR 41288, October 20, 1988.

While several commenters expressed concern with the high volume criterion, most commenters supported the concept of using an explicit quantitative high volume criterion to help define special mineral processing wastes.

Several commenters argued that nothing in the Appeals Court decision indicated that Bevill wastes must meet both the high volume and low hazard criterion, arguing that, in fact, wastes that do not satisfy either of the criteria could be retained within the exclusion.

The Agency rejects this conclusion, and believes that to do otherwise would be inconsistent with the Court's reading of legislative intent as well as ignore the essence of the special waste concept, which EPA first articulated in 1978.

Several commenters recommended that EPA not rely solely upon volumetric data when making Bevill exclusion decisions. Instead, they suggested that EPA use the criterion only as a guideline and fully consider the unique or unusual nature of mineral processing operations rather than removing a waste from the exclusion based solely upon volume. In addition, one commenter stated that EPA's use of the waste volume criterion without reference to other mineral processing considerations ignores Congressional intent in requiring specific studies of each special waste category.

EPA disagrees. The issue in this rulemaking is which mineral processing wastes will be considered special wastes and hence, subject to further study, and what criteria will be used to identify these special wastes. Volume is the most relevant and objective measure of the degree to which a waste is amenable to management under the provisions of Subtitle C. Other factors, such as the special or unique characteristics of a particular operation or industry sector, are not relevant to defining high volume, and therefore, the feasibility of Subtitle C controls. These factors will, however, be evaluated for the wastes that are retained within the exclusion and be discussed in the Report to Congress.

Other commenters also noted that Congress did not intend to create a disincentive for voluntary waste reduction efforts when it passed the Bevill Amendment, and contended that imposing a volume cut-off for defining special wastes would create such a disincentive. One commenter stated that because one of the primary goals of RCRA is reduction of waste, EPA should not "reward" successful waste reduction efforts by removing wastes from the mining waste exclusion.

EPA agrees that neither the Congress nor the Agency intended to discourage waste reduction efforts on the part of industry. The issue at hand, however, is establishing the boundaries of a temporary exclusion which provides for study of the unique aspects of managing some of the unavoidable high volume residues of mineral processing. Presumably, if mineral processing waste volumes could be significantly reduced through process modifications, facility operators would already have implemented such modifications, because waste management (of either hazardous or non-hazardous waste) is costly, particularly for large volumes of wastes. Therefore, EPA believes that wastes that can be greatly reduced in volume through process modifications are not truly special wastes in the first instance. Moreover, the Bevill Amendment was clearly intended to provide a bridge between historical and future waste management requirements based upon current waste streams and waste generation rates. Therefore, prospective behavior on the part of industry or individual facilities has no effect on a waste stream's Bevill status, since this status will be determined on the basis of historical waste generation rates. Nonetheless, EPA has made allowances for recent waste reduction efforts by accepting the highest annual waste generation volume during any of the five years from 1982 to 1987 (1983 to 1988 in today's proposal).

In developing the high volume criterion the Agency evaluated four methodological issues, including: (1) The appropriate degree of aggregation of waste streams; (2) the basis for quantitative analysis (facility-specific vs. industry-wide); (3) the units of measure; and (4) the types of other wastes to be used as the basis for comparison.

1. Degree of Aggregation of Waste Streams

For the 10/20/88 NPRM, the Agency weighed three options concerning the degree of aggregation: (1) Consider individual waste streams generated by specific industry sectors separately (the option adopted); (2) aggregate all waste streams within a given facility; and (3) combine similar waste streams across mineral commodity sectors. Commenters in general requested more aggregation, with several commenters recommending specifically either the second or third options or modification of the first option (i.e., more aggregation of similar individual waste streams). These commenters identified several precedents for aggregating waste streams, citing EPA's effluent guidelines and supporting documents, the 1985 proposed reinterpretation, and the Agency's approach in addressing extraction and beneficiation wastes. They also maintained that aggregation is consistent with Congressional intent and with the 1985 proposed reinterpretation which designated "primary smelting slag" as a generic

Bevill Amendment processing waste category.

Several commenters claimed that EPA has artificially segregated processing wastes into specific waste streams (e.g., separating non-contact cooling water from process wastewater). Several suggested that within a facility, all wastes should be grouped together for the purpose of developing a per-facility high volume criterion. Several commenters also indicated that EPA should not treat lower volume waste streams differently than higher volume waste streams if all the streams are part of the same process and if operations are uniquely related to ore and mineral processing operations. They argued that for purposes of the Bevill study, EPA should aggregate, especially within but also across sectors, waste streams that arise from the same types of feedstocks and production processes and that are similar in their generation rates, physical or chemical waste characteristics, management practices, and/or other characteristics.

Several commenters discussed specific waste streams within their particular commodity sector(s) that they felt were exemplary of waste streams that should be aggregated. For example, commenters representing the phosphate sector contended that EPA should aggregate process waters associated with phosphate rock processing along with the entrained solids. Similarly, commenters from the copper sector argued that EPA should not segregate wastes such as process wastewater and contact cooling water, various blowdown effluents, and wastewater treatment plant sludges. These commenters also argued that all slags from the various operations of copper smelting and refining should be aggregated into one waste stream (as they were in the proposed rule). They claimed that presently, EPA treats smelting and refining wastes inconsistently because the Agency disaggregates smelting and refining slags while concurrently aggregating smelting and refining process wastewaters.

EPA largely disagrees with these comments. EPA believes, and the Court has agreed, that mineral processing wastes must meet all special waste criteria to be entitled to the temporary exclusion from Subtitle C requirements. In order to complete the study requirements listed at section 8002(p) of RCRA, EPA must define current and alternative practices that are and could be employed to manage special mineral processing wastes. In practical terms, this requires that the Agency examine *individual* waste streams in order to determine whether current practices (e.g., co-management) are adequately protective of human health and the environment, and whether individual Bevill wastes are amenable to Subtitle C controls. Moreover, because the Agency believes that it is neither appropriate nor practical to screen an assemblage of dissimilar wastes with a criterion addressing hazard to identify the wastes that are clearly not low hazard, it is similarly inappropriate to evaluate the volumes of wastes on an aggregated basis.

In determining the waste streams to be included in the Bevill exclusion, EPA did, however, employ some aggregation within mineral commodity sectors, specifically for copper slags and certain process wastewaters. For purposes of the rule, EPA continues to propose to treat process wastewater as a generic category comprising waters that are uniquely associated with processing operations that have accumulated contaminants to the point that they must be removed from the mineral production system; the category includes contact cooling water but does not include aqueous waste streams from pollution control devices (e.g., acid plant blowdown, wastewater treatment sludge).

Some commenters also suggested that similar wastes should be aggregated across mineral commodity sectors. They claimed that EPA has created the illusion of separate waste streams by segregating processing wastes by mineral commodity sectors. These commenters contended that waste streams should be considered on an industry-wide, aggregate basis rather than on a sector-specific basis, again determining which waste streams to aggregate based on similarities in process, waste, and waste management characteristics.

In particular, some commenters that operate pyrometallurgical processes maintained that all slags should be aggregated across mineral commodity sectors because the slags have similar characteristics. They maintained that Congress' intent was that all slags should be considered as a single waste, pointing out that the generic waste category "smelting slag" was explicitly mentioned in the legislative history of the Bevill Amendment and in the 1985 reinterpretation proposal (see 50 FR 40292, October 2, 1985).

Although the Agency believes that combining very similar wastes (e.g., copper reactor and converter slags) within a commodity sector for purposes of evaluating volume is appropriate, it does not believe that aggregating wastes across sectors is appropriate. Despite the fact that metallic ore processing facilities having pyrometallurgical operations, for example, share many attributes, the Agency believes that differences in feedstock composition may render processing wastes (e.g., slag) at some facilities in some sectors potentially more hazardous than similar wastes at other facilities in other sectors. Moreover, waste generation rates (and hence, amenability to management under Subtitle C) may vary dramatically between industry sectors for the same type of waste. Accordingly, EPA continues to propose that a high volume waste generated by one commodity sector may be a special waste while another waste that is generated by the same type of process in another sector and is physically similar but is generated in low volumes is not a special waste.

2. The Basis for Quantitative Analysis (Industry-Wide vs. Per-Plant Waste Generation)

In the October 20, 1988, NPRM, EPA discussed three options for conducting its quantitative analysis of candidate Bevill mineral processing waste streams: (1) Develop and analyze a plant-specific measure of waste generation; (2) examine waste stream generation on an industry-wide basis; or (3) develop and utilize a combination of the first two alternatives by developing both a plant and industry-specific criterion (the option adopted).

Some commenters supported the use of the facility level test, because it would not penalize sectors comprised of a small number of individual facilities (i.e., the zinc, lead, beryllium, chromium, tungsten, and other sectors). Many objected, however, to the use of a facility *average*, pointing out that the use of an average may remove wastes from the exclusion that are generated in large volumes at one or more facilities in commodity sectors comprised primarily of small facilities.

The Agency believes that using a sector-wide average is the most equitable way to define high volume mineral processing wastes. Allowing any individual facility to qualify for the exclusion if it exceeds the volume criterion would discriminate against smaller producers in a sector, while excluding a waste on a sector-wide basis if any one facility fulfilled the criterion might result in wastes that are not truly high volume (i.e., are amenable to Subtitle C controls at most facilities) being retained within the exclusion.

Some commenters also felt that individual facility operators would find it difficult to determine whether their particular wastes or residuals exceed the volumetric threshold; different facilities which generate the same waste streams in different quantities could arrive at opposite conclusions about whether their wastes meet the high volume criterion. Therefore, instead of a threshold based on a facility-level average, several commenters recommended that EPA establish a high volume criterion on an individual facility basis. This would, they maintained, incorporate the benefits of the facility level analysis while countering the statistical and administrative disadvantages of the facility average.

The Bevill exclusion applies to wastes, not individual facilities. In this proposal, EPA has already applied the criteria outlined in this preamble to derive the list of waste streams (including treatment residuals) proposed for continued exclusion from regulation under Subtitle C. Facility operators will not have to apply the criterion themselves but merely determine if the facility generates the proposed Bevill waste. Facility owner/operators who believe that EPA has overlooked a waste stream which meets the stated criteria should submit public comments, including supporting documentation, regarding the physical, chemical, and radiological characteristics and generation rate of any potential candidate waste stream(s) managed at their facilities. EPA will then utilize the information submitted by all commenters representing a particular commodity sector to determine whether the candidate special waste satisfies the high volume criterion (and the other special waste criteria).

Some commenters objected to the use of the facility level test as part of the high volume criterion. They argued that the most important and undesirable effect of the current facility level average test would be to retain wastes that should be withdrawn from the exclusion. They noted, furthermore, that all but one of the wastes meeting the total nationwide volume test, the measure that they contended is the true indicator of large volume, also meet the facility-level test, rendering this facility-level test ineffectual.

EPA believes that the Bevill exclusion is intended to apply only to those waste streams that are produced in such large quantities that they may not be amenable to management under Subtitle C. The burden of waste management (and, therefore, the feasibility of Subtitle C controls) depends more on the quantity of waste generated by a typical facility than on the total amount produced by a commodity sector. This is particularly true in industries that generate large quantities of waste that, for technical and economic reasons, are managed on-site.

Few comments directly addressed the nationwide volume criterion. Several commenters requested that EPA require that wastes pass both the sector-wide and the facility-level test. Other commenters, however, were concerned about any approach in which all excluded wastes would be required to meet the nationwide volume criterion, because they felt this test would unfairly remove from the exclusion any sectors with small numbers of waste generators. One commenter suggested that the total volume test be dropped altogether.

In response to these comments, the Agency has decided to eliminate the nationwide volume criterion and rely solely upon a facility-level analysis of waste generation. While the industry-wide volume criterion is consistent with past Agency proposals to resolve the special mineral processing wastes issue, the Agency believes that average per-facility volumes provide a better measure of amenability to management under Subtitle C controls, in large part because large volume mineral processing wastes typically are managed on-site. Based upon EPA data and information submitted in public comment on the 10/20/88 NPRM, eliminating the industry-wide test results in the removal of only one waste stream from the Bevill exclusion (lime kiln APC dust).

3. Units of Measure

EPA weighed two options in determining the appropriate units of measure to apply to mineral processing wastes in order to serve as a basis of evaluation and comparison with other high volume wastes. These options included (1) using the quantity of waste generated annually in metric tons (the option adopted), or (2) using ratios of waste volume generated to quantity of final product (or other appropriate comparisons, e.g., to quantity of ore/mineral feedstock). While EPA noted several advantages to using a ratio in the preamble to the proposed rule, the Agency noted that existing data were not adequate to compile ratios for certain prominent large volume waste streams.

The only comment regarding the evaluation of waste generation in absolute terms was directed at the use of metric tons which, the commenter indicated, is a unit of mass and not of volume. This commenter points out that the court decision specifically references "large volume wastes" and requests that EPA clarify this apparent contradiction.

As discussed above, the term "high volume" has always been an integral part of the definition of special wastes. For purposes of analysis, however, EPA believes that it is convenient to utilize data expressed on a common mass basis, because candidate special wastes having different physical forms are often quantified in different units (e.g., cubic yards vs. gallons). Because the wastes of concern are typically either solids, sludges, or liquids, conversion between waste quantities expressed in terms of mass/weight and volume is simple and straightforward, requiring only the density of the material in question. EPA has, accordingly, decided to utilize metric tons as the common analytical unit for this rulemaking. The Agency notes that it has consistently discussed high volume wastes in terms of metric tons since 1978. Furthermore, EPA believes that amenability to Subtitle C controls may be addressed most accurately through the use of units of mass.

While EPA did not utilize a ratio in support of the October 20, 1988 proposal, the Agency did solicit public comment on the use of a ratio of waste volume generated to one or more measures of material handled to further define the term "high volume." EPA also requested suggestions for the numerical value of the appropriate ratio. Several commenters strongly supported the adoption of a waste-to-product ratio as an additional or alternative test in determining whether a waste should be Bevill-excluded. For example, one commenter suggested that EPA consider a waste-to-ore or mineral ratio. Other commenters objected to the use of a ratio approach, contending that it is irrelevant to the process of identifying high volume mineral processing wastes, and could result in low volume wastes being retained within the Bevill exclusion.

Several commenters appealed to EPA to not reject the ratio approach solely because of the limitations of the Agency's existing data base. They argued that a ratio helps to ensure that the high volume criterion does not discriminate against small industry sectors or against large volume waste generators in sectors with predominantly low volume waste generators. Additionally, commenters agreed that ratios remain relatively constant whereas the total volume of waste generated (both nationally and at the facility level) varies with economic

market fluctuations. They also contended that, administratively, the use of a ratio would be more accurate in distinguishing between mineral processing wastes and other industrial wastes and be more easily used by facility operators in determining which of a facility's wastes might meet volumetric criteria.

While recommending the ratio approach, some commenters did suggest several conditions. They requested that the ratio be employed as an alternative, rather than additional, test that must be met for a waste to be retained within the exclusion. Several commenters recommended that in administering this criterion EPA retain any waste stream that has met the ratio test for any calendar year between 1982 and 1987, in order to avoid penalizing firms and industries that have reduced their waste generation rates in recent years.

As mentioned above, several commenters recommended that EPA not employ a ratio approach. These commenters maintained that the ratio concept does not take into account the efficiency of the processing operation and that the use of ratios creates incentives for poor processing or increasing waste generation rates, which would be contrary to EPA's goal of waste minimization.

Comments on potential ratio values were varied. In the October 20, 1988 NPRM, EPA suggested that if a waste-to-product ratio were used, a value of 0.5 might be appropriate. In criticizing the use of any ratio approach, some commenters argued that this value is miniscule in comparison to the ratios for other mining wastes. Other commenters, on the contrary, argued that the value was not low enough to effectively distinguish high volume from low volume processing wastes, pointing out that EPA's own data indicate that two of the wastes proposed for exclusion, copper process wastewater and copper bleed electrolyte, have ratios lower than 0.5. They also noted that although many other special wastes (e.g., fly ash, cement kiln dust) have ratios that are less than 0.5, these materials are clearly within the Bevill exclusion. Generally, commenters supporting the use of a ratio criterion suggested a waste-to-product ratio in the range of 0.1 to 0.2.

Based upon an analysis of the comments received, the Agency has concluded that the use of a waste-to-product or other ratio would not enhance EPA's understanding of the amenability of mineral processing wastes to management under Subtitle C controls (the purpose of the volume criterion) and has, accordingly, decided to not include a ratio of any kind in the high volume criterion. Ratios provide a measure of the degree of concentration and/or relative quantity of material handled in the production process. Hence, they would be useful in prediction the quantity of wastes that might be generated assuming a given quantity of mineral product or ore feedstock. This information, however, is not relevant to determining whether a particular mineral processing waste is amenable to Subtitle C control. In fact, data submitted to EPA in public comment indicate that many low volume wastes (i.e., those generated in the 200–500 mt/yr/facility range) have relatively high ratios of waste-to-product (greater than 0.5). Therefore, EPA believes that this concept is not suitable for identifying high volume mineral processing wastes.

4. Types of Wastes Used as the Basis for Comparison

In the 10/20/88 NPRM, the Agency discussed four options concerning the basis for comparison that should be utilized in developing values for waste volume thresholds: (1) Extraction and beneficiation wastes; (2) other special wastes such as oil and gas wastes; (3) RCRA Subtitle C wastes; and (4) some combination of all three (the option selected).

Several commenters objected to some degree to each of the approaches. For example, a commenter claimed that EPA, regardless of which approach was taken, compared disaggregated mineral processing wastes to aggregated Subtitle C, oil and gas, and mining wastes.

This statement is only partially true. EPA compared aggregated wastes managed under Subtitle C with quantities of proposed Bevill mineral processing wastes, because waste- and facility-level data on Subtitle C waste management were unavailable, making comparisons with disaggregated Subtitle C data infeasible. Other comparisons developed in support of the volume criteria, however, used disaggregated data (e.g., mineral extraction and beneficiation wastes on an individual and commodity sector-specific basis, distinct high volume oil and gas wastes).

Another commenter argued that the only permissible basis of comparison with processing wastes is the universe of industrial wastes because comparison with Bevill or Subtitle C wastes is improper and contrary to Congressional directive.

This comment reflects an incomplete understanding of the special wastes concept and of Congressional intent in enacting the Bevill exclusion. The purpose of the high volume criterion is to identify mineral processing wastes for which the provisions of Subtitle C might be potentially infeasible. Therefore, comparisons with Subtitle C wastes are not only reasonable and appropriate, but necessary. Comparisons with other Bevill wastes, on the other hand, do not provide conclusive evidence, but do suggest boundaries on what might be considered a high volume special waste.

Finally, one commenter asserted that the Court directive in *EDF* v. *EPA* to establish the Bevill exclusion's boundaries on the basis of "high volume" does not require EPA to set a volume threshold for special mineral processing wastes that relates in any way to waste volumes in other industries. They argued that EPA could in fact establish a distinct volume criterion for each industry or sector.

EPA agrees that the Court directive does not require the Agency to establish a volume threshold on the basis of comparisons with other wastes. In fact, the Court directive leaves the reasoning behind any volume threshold to EPA's discretion. The Agency believes, however, that the methodology it has used to derive the specific volume criterion levels is reasonable and equitable.

With regard to the volume comparisons using RCRA Subtitle C wastes, a commenter correctly observed that the specific volumetric criteria used exceed the quantities of most wastes that are managed under Subtitle C. Another commenter argued that basing the high volume criterion on the waste volumes generated in the top ten percent of Subtitle C facilities has no legal or logical basis. This commenter recommended that rather than choosing the highest volume listed hazardous wastes to compare with mineral processing wastes, EPA should have utilized the average, or typical, Subtitle C waste volume.

The Agency disagrees with the argument that a relevant comparative analysis should reflect "typical" quantities of hazardous waste generated. Because the Bevill exclusion is intended to exempt only wastes generated in volumes which may be too large to be managed under Subtitle C of RCRA, it would not be appropriate to base the high volume criterion on comparisons with the hazardous wastes that are generated and managed in "typical" volumes.

Several commenters addressed the use of other mineral processing wastes, arguing that in setting the high volume criterion, EPA should not concern itself with the generation rates of the six recently relisted smelting wastes. EPA disagrees. Because the Court explicitly

determined that the six smelting wastes are not high volume, low hazard wastes, the generation rates of these wastes can and should serve as a lower bound below which wastes should not be afforded Bevill status.

5. Definition of High Volume Mineral Processing Wastes

In the October 20, 1988 NPRM, EPA proposed to designate a waste as a "high volume" processing waste if it met either of the following criteria: (1) Produced annually by all U.S. facilities in a processing sector in quantities greater than two million metric tons in any year from 1982 to 1987, or (2) produced at an average per facility rate, in a given sector, in excess of 50,000 metric tons during any of the years 1982 to 1987.

Several commenters maintained that the thresholds were set higher than necessary and suggested values in the range of 100,000 to 400,000 metric tons per year for the sector-wide total and 25,000 to 35,000 metric tons per year for the facility-level total. Specifically, some commenters also argued that the proposed sector-wide and facility thresholds are not supported by EPA's own data on extraction and beneficiation wastes. They contended that EPA's data indicate that lowering the criterion would allow EPA to effectively distinguish between high and low volume processing wastes. They also noted that an evaluation of generation rates of other special wastes (e.g., utility wastes) indicates that the thresholds are significantly higher than they should be.

Some commenters also contended that EPA's approach contradicts its earlier statements (e.g., 51 FR 36233) that using the lowest of the traditionally considered high volume wastes as the threshold is inappropriate. They argued that the fact that increasing or decreasing the 50,000 metric tons per year average facility threshold point by 25 percent would affect the designation of only one mineral processing waste (see 53 FR 41294) does not support EPA's thresholds; this is an arbitrary fact that could easily be stated about a variety of other thresholds and demonstrates that the threshold is too high.

Unlike the definition of extraction and beneficiation wastes (materials that are, in almost all cases, clearly high volume, low hazard wastes), there has always been some ambiguity regarding the definition of mineral processing wastes as it relates to regulatory status under the Bevill exclusion. For this reason, EPA believes that it must explicitly define the criteria used to define special mineral processing wastes, including those used to define high volume.

In order to avoid the confusion caused by the earlier proposed rulemaking, EPA has attempted to define "high volume" by making explicit comparisons with several different types of wastes. The Agency has not used the lowest of the other Bevill waste generation rates to establish the threshold but has instead used this information as a "reality check" for the criteria that it developed based on data concerning Subtitle C waste generation and management. Finally, the fact that one extraction or beneficiation waste is generated at quantities less than the threshold for Bevill mineral processing wastes does not, in the Agency's view, invalidate the adopted threshold.

Some commenters were concerned that the criterion might discriminate unfairly against smaller producers and industry sectors. Utilizing the existing volume criterion to formulate the final rule would, they claimed, result in the effective removal of all of the processing wastes generated by 21 minor metals industries from the mining waste exclusion. In addition, these commenters argued that fixed high volume standards unfairly discriminate against smaller producers and industries that have recently experienced poor market conditions.

The Court has ruled that the Bevill exclusion has always been intended to cover only high volume, low hazard wastes. The fact that some industry sectors would no longer enjoy the temporary exclusion from Subtitle C if the proposed rule were promulgated is not a relevant factor in defining either the scope of the Bevill exclusion generally or the provisions of the high volume criterion specifically. In addition, EPA believes that the proposed high volume standard avoids discriminating against smaller producers because it is based on average per-facility waste generation rate. Similarly, EPA believes that the proposed approach accounts for variations in market conditions by using the highest average annual per-facility waste volume for the most recent five year period.

Other commenters argued that the proposed thresholds are too low. Specifically, they argued that the thresholds are not supported by comparisons with extraction and beneficiation wastes, pointing out that because extraction and beneficiation wastes are clearly within the scope of the Bevill exclusion, their generation rates should serve as the lower bound for evaluating processing wastes.

This line of argument ignores the nature of the mineral production process. In minerals processing, values are progressively concentrated from native materials in stages; generally, each successive step produces waste volumes which are orders of magnitude lower than those generated by the previous step. Accordingly, one would not expect waste generation rates from mineral processing to parallel those from extraction and beneficiation operations. Extraction and beneficiation waste volumes, therefore, are not appropriate for establishing a lower bound for a processing waste volume threshold.

Some commenters argued that EPA's comparisons with Subtitle C data are faulty. They contended that EPA has not demonstrated that there is something unique about the wastes identified by the thresholds or the management practices employed for these wastes that would render Subtitle C regulatory controls technically infeasible or inappropriate. They claimed that the fact that ten percent of Subtitle C facilities manage waste quantities in excess of the thresholds demonstrates that it is indeed technically feasible to manage these large waste volumes; special wastes are not "special," they contended, if the category applies to such a substantial percentage of the regulated community.

With regard to the actual comparisons with Subtitle C wastes, these commenters argued that EPA has distorted the facts in its attempt to dismiss the overlap by using the unsupported claim that the Subtitle C data refer to combined wastes streams dominated by aqueous waste streams. In fact, the commenters argued that proposed BDAT background documents report that generators producing at least two of the nine top listed hazardous waste streams referred to in the 10/20/88 NPRM averaged in excess of 50,000 metric tons per facility per year in 1985. Four plants produced 801,000 metric tons of K104 wastes (combined wastewater streams generated from nitrobenzene/aniline production), averaging over 200,000 metric tons per plant. Similarly, seven plants produced 414,000 metric tons of K016 wastes (heavy ends or distillation residues from the production of carbon tetrachloride), averaging 59,143 metric tons per plant.

As noted by another commenter and as discussed above, there is no reason to require that the ranges of volumes at which excluded mineral processing and Subtitle C wastes are generated and managed be mutually exclusive. In addition, EPA believes that some

overlap between the available aggregated Subtitle C data and the volumes of excluded mineral processing wastes is indeed unavoidable, in part because available Subtitle C data include commercial facilities. Many of the largest Subtitle C facilities are commercial hazardous waste management operations, which are in the business of managing aggregated wastes generated by other entities, for which they receive compensation. Facilities that manage only their own wastes (such as most mineral processing operations), on the other hand, incur waste management expenses as an operating cost. Because the incentives for and costs/benefits of managing large volumes of waste within these two groups of facilities are quite different, EPA believes that allowances must be made in evaluating the aggregated Subtitle C data. For example, the proportion of non-commercial Subtitle C facilities (i.e., those that may appropriately be compared with mineral processors) that generate waste volumes above the specified high volume threshold is actually less than ten percent. Moreover, mineral processing facilities often manage multiple high volume waste streams. For these reasons, the Agency feels that an overlap with ten percent of the total Subtitle C universe is an appropriately stringent approach and supports the average facility criterion of 50,000 metric tons per year.

Several commenters suggested that separate tests be established for solid and aqueous liquid waste streams, as the typical waste generation rates of these waste types vary dramatically. Furthermore, these commenters noted that managing solid waste streams differs from managing aqueous liquid waste streams with respect to technologies employed, cost, and technical feasibility. Conceptually, the Agency believes that the idea of separate tests for solid and aqueous liquid waste streams may have merit. Industry routinely manages wastewater volumes in the millions of gallons per day per facility (i.e., well over one million metric tons per year); thus, it may be appropriate to set a much higher criterion threshold for aqueous liquid mineral processing wastes. Because of time and data constraints, however, EPA could not undertake the analysis necessary to develop separate criteria for this NPRM. EPA hereby solicits comment on the idea of a different volumetric criterion for aqueous liquid wastes, as well as suggestions of possible values for an aqueous liquid waste volume cut-off for possible incorporation into the final rule. EPA is considering an aqueous liquid waste volume criterion on the order of 1.5 million metric tons per year.

C. The "Low Hazard" Criterion

As discussed in the preamble to the October 20, 1988 NPRM, EPA evaluated two options for characterizing a mineral processing waste as low hazard: Defining low hazard wastes as those mineral processing wastes that exhibit none of the characteristics of hazardous waste (i.e., EP-toxicity, corrosivity, reactivity, or ignitability—see 40 CFR 261.21 through 261.24), and deferring judgment of hazard until study for the Report to Congress. Because of reservations regarding the appropriateness of applying the four hazardous waste "characteristics", EPA decided to defer judgment of hazard in the proposed rule.

1. Deferring Judgment of Hazard Is Appropriate

Several commenters supported EPA's decision to not use the Subtitle C characteristics of hazardous waste to determine which mineral processing wastes are covered by the Bevill Amendment or to assess hazard within the context of this rulemaking. They argued that (a) EPA cannot and should not require a low hazard criterion; (b) in addition to insufficient data, EPA's tests for hazardous "characteristics", especially the EP-toxicity test, are not appropriate or accurate for mining and mineral processing wastes; and (c) a mineral processing waste that exhibits a characteristic of a hazardous waste should not automatically be subject to Subtitle C regulations, as actual risk from mineral processing facilities is low.

a. *The Need for a Low Hazard Criterion.* Several commenters maintained that EPA should retain a waste within the exclusion if the waste is either high volume or low hazard. This would, they argued, address both the need for and feasibility of Subtitle C regulations for mineral processing wastes. Some commenters also argued that the low hazard criterion is unnecessary and that requiring that wastes meet any such criterion may actually be contrary to Congressional intent. These commenters noted that in the lawsuit over the regulatory determination for mineral extraction and beneficiation wastes (*EDF* v. *EPA*, 852 F.2d 1309 D.C. Cir. 1988), the Court found that Congress designed the Bevill Amendment to break with the previous approach to regulation of hazardous industrial waste, revealing a Congressional understanding that some "hazardous wastes" might require management and control techniques different than those of Subtitle C.

Some commenters also contended that precedent exists for bypassing the low hazard criterion, noting that in the 1986 regulatory determination for mining wastes, EPA asserted that Subtitle C regulation might not be necessary if other Federal or State programs control any risks associated with mining wastes. In fact, commenters argued, the Appeals Court decision on the mining wastes regulatory determination demonstrates that EPA must consider factors other than hazard in determining whether a high volume mining or processing waste should be permanently excluded from Subtitle C regulation.

In addition, a commenter argued that the proper time to apply a hazard criterion would be when making a regulatory determination as to which processing wastes should be subject to Subtitle C, and not when deciding which wastes are to be retained within the Bevill exclusion. This position was supported further by another commenter who, reiterating EPA's proposed position, stated that the determination of whether a waste is "low hazard" can only be finally determined by the studies that will support the next Report to Congress (i.e., after the reinterpretation of the Bevill exclusion is finalized).

As discussed in more detail below, EPA believes that the criteria used to identify which mineral processing wastes are properly within the scope of the Bevill Amendment should include a component that addresses hazard. This conclusion is based upon review of public comments, and more detailed analysis of the Appeals Court decision prompting this rulemaking and of the regulatory and legislative history of the Bevill Amendment and the special wastes concept. The Agency recognizes that a full assessment of hazard can be appropriately considered in a Report to Congress. Nevertheless, a test designed to identify any wastes that are clearly not low hazard wastes is a necessary and appropriate component of the criteria for identifying mineral processing wastes that remain temporarily excluded from Subtitle C regulation by the Bevill Amendment. Any wastes that are clearly not low hazard wastes are not special wastes and would not, under this proposal, remain within the Bevill exclusion.

b. Existing Test and Data Limitations. Several commenters also suggested that existing data are insufficient to assess the potential hazard posed by most, if not all, mineral processing wastes. These commenters maintained, in

addition, that existing EPA toxicity tests (e.g., EP, TCLP) are inappropriate for judging the hazard posed by mineral processing wastes, primarily because these tests are based on the leaching of constituents under conditions similar to those found at municipal landfills while mining and mineral processing wastes are usually disposed in on-site monofills. Several commenters contended that there are no available valid substitute testing procedures.

Other commenters also maintained that the EP-toxicity test is insufficient as a means of assessing hazard. These commenters suggested, however, that the test is not strict enough and would allow wastes that are actually toxic to remain within the exclusion. They noted, for example, that the test only evaluates the effects of acidification on wastes (e.g., copper slags) and does not assess mobilization of metals under other conditions. A commenter specifically argued that testing of recycled slag with the EP-toxicity test produced concentrations of arsenic that are significantly higher than concentrations produced using deionized water to perform the extraction, but were lower than results obtained using other extraction media containing complexing agents such as ethylenediamine tetra-acetic acid (EDTA).

EPA believes that there are two principal questions regarding the use of toxicity tests for determining the hazard posed by mineral processing wastes: (1) Are any measures of inherent toxicity sufficient for defining the universe of relevant wastes, and (2) if so, what sort of test(s) can and should be used? As discussed in more detail below, EPA believes that the use of inherent toxicity and pH tests as a low hazard criterion is, in fact, feasible and represents the only currently available approach for identifying those mineral processing wastes that are clearly not low hazard wastes. With regard to the appropriate test, EPA concurs with those commenters who suggest that there may be better approaches than the EP-toxicity test for screening mineral processing wastes to identify those wastes that are clearly not low hazard. The Agency has concluded, however, that it disagrees with the contention of some commenters that there are no available valid substitute testing procedures and, today, is proposing the use of a different testing procedure for determining which mineral processing wastes are clearly not low hazard wastes.

c. Consideration of Risks. Some commenters contended that contaminants released from mining sites have a lower potential for human exposure than do those from typical industrial or hazardous waste management facilities and, therefore, any risk to health is minimal, if not non-existent. One commenter suggested that the nature of the processes that generate high volume wastes also ensures that the wastes are of low toxicity due to the effects of dilution. Commenters indicated, furthermore, that the location of many mineral processing facilities is such that they pose a uniquely low degree of hazard in comparison with other industries. The reasons for this, argued some commenters, are that (1) because mineral processing facilities are primarily located in dry climates, leaching of wastes is unlikely; (2) these facilities are usually in less densely populated areas than those of other industries; and (3) waste disposal areas in mineral processing facilities are farther from ground-water and drinking water supplies than are facilities in other industries.

For example, one commenter indicated that the probability of significant impact on the use of ground water located beneath its large copper facility is quite low because the underlying shallow aquifer has always been highly saline and unusable while the deep aquifer is both historically undrinkable and protected from contamination by an impervious clay layer. Another commenter reported that its wastewater from magnesium production exhibits only low pH and is managed in an area that is "a virtual desert" in a calcium carbonate sand-based pond that provides a neutralization medium for the acidic wastewater.

EPA recognizes that factors such as distance to population centers and hydrogeologic setting are important for determining the risks posed by mineral processing wastes to human health and the environment. The Agency also recognizes that some mineral processing facilities may pose negligible risks due to their locations or settings. Nonetheless, EPA believes that a significant portion of the operations that generate high volume processing wastes may not be sufficiently isolated to pose negligible risk and that, in any event, available data are not sufficient to substantiate claims to this effect. After appropriately narrowing the scope of the Bevill exclusion (i.e., removing wastes that are clearly not low hazard), EPA intends to collect the necessary data to assess the risk posed by the special mineral processing wastes, as required for the Report to Congress.

2. Deferring Judgment of Hazard Is Improper

Some commenters disagreed with EPA's decision to defer the judgment of hazard and argued that it was contrary to both Congressional intent and the two recent decisions of the U.S. Court of Appeals (i.e., *EDF* v. *EPA*. 852 F.2d 1309, and *EDF* v. *EPA*, 852 F.2d 1316). Moreover, these commenters argued, EPA's proposal is inconsistent with previous Agency rulemakings because it ignores the hazard component of the criteria that the Agency used to describe special wastes in 1978, which the Court has reaffirmed as denoting the limitations of the RCRA mining wastes exemption.

In reviewing its October 1988 proposal to defer judgment of waste hazard until preparing the Report to Congress, as well as the resulting public comments, EPA has concluded that it should change the approach it proposed by developing and applying a hazard criterion in determining the proper scope of the Bevill exclusion. Specifically, EPA believes that, in spite of the technical difficulties associated with developing and applying a low hazard criterion, such a criterion was part of the original special waste concept (see 43 FR 58946, 58991–2, December 18, 1978) and is required by the Court's reading of Congressional intent. Although additional analysis of the hazard associated with wastes that would remain excluded under this proposed rulemaking will be performed during preparation of the Report to Congress, EPA will now be complying more directly with Congressional intent by removing from the exclusion those wastes that are clearly not low hazard wastes.

Another commenter objected to EPA's failure to propose a low hazard criterion, claiming that because mineral processing wastes must pass either a high volume or a low hazard criterion to remain excluded and only the volume criterion exists, many low volume mineral processing wastes would be removed from the Bevill exclusion under the proposed rule. Therefore, they contended, by deferring a judgment of hazard EPA may cause low hazard wastes to be included in the RCRA Subtitle C program. Alternatively, another commenter stated that EPA should consider waste-related hazard rather than volume in order to comport with Congressional intent.

EPA has considered and rejected these suggestions that the Agency rely solely upon either volume or hazard to make Bevill exclusion decisions because

this approach would be inconsistent with Congressional intent and the special wastes concept.

Several commenters recommended that the final rule include explicit toxicity criteria that would eliminate from the exclusion any processing wastes not qualifying as low hazard wastes. These commenters generally contended that adequate data exist to make some waste-specific determinations of hazard for at least some large volume mineral processing wastes. These commenters claimed that toxicity data on the copper, zinc, lead, bauxite, and aluminum sectors indicate that several of these wastes are not low hazard. They stated, for example, that in a previous EPA waste sampling effort, wastes from copper production showed elevated leachable levels of arsenic, cadmium, and mercury in process wastewater and acid plant blowdown; and arsenic, cadmium, and lead in slag. They also noted that large quantities of these wastes are stored in unlined surface impoundments, wastes piles, and landfills.

EPA acknowledges that it previously has collected and analyzed some data on some mineral processing wastes. The Agency does not believe, however, that those data provide an adequate means for evaluating compliance with a low hazard criterion on a waste-by-waste basis, except in a few limited cases, as discussed below. Therefore, EPA plans to collect and analyze the data required to determine which of the other high volume mineral processing wastes also pose low hazard, based on the pH and toxicity and mobility tests presented below.

Several commenters indicated that EPA should use information on the risks to human health and the environment, either in addition to or in the absence of data on waste characteristics, to determine which mineral processing wastes are low hazard wastes. Several commenters stressed that risks from mineral processing facilities are well known and that water contamination risks for mining facilities as a group are similar or even higher than for the group of hazardous waste-producing facilities. Some commenters argued that there are several well-established cases of environmental damage resulting from waste disposal activities at mineral processing facilities. For example, these commenters claimed that two of the five active lead smelters have legal actions for damage pending against them.

Another commenter, who reported having used copper smelting slag purchased from a mineral processing facility for road base, indicated that heavy metal contamination of soils and run-off has resulted from the sale of this material without a proper indication of its risks. Other commenters contended that phosphogypsum stacks pollute groundwater, surface water, and air, and that residual radioactivity that they contain may produce harmful effects such as lung cancer.

EPA recognizes that there is limited information indicating that some past and current mineral processing waste management practices may pose unacceptable risks to human health or the environment. However, EPA believes that it is infeasible to systematically consider this information within a low hazard criterion for this rulemaking, and then apply this information uniformly to all of the various mineral commodity sectors distributed throughout the country. Therefore, EPA intends to utilize a hazard criterion based upon inherent toxicity, and to collect and analyze various kinds of additional data (such as damage cases) for the Report to Congress, once the scope of the Bevill exclusion has been appropriately defined.

D. Comments on Candidate "Special" Mineral Processing Wastes

This section discusses comments received on specific wastes from mineral processing operations. The discussion is organized around the fifteen wastes proposed for exclusion in the October, 1988 NPRM. In contrast to other sections within Part III of this preamble, EPA has not, in general, provided responses to waste nomination-related comments within this section. Instead, the proposed status of candidate Bevill mineral processing wastes is addressed in Part IV, which discusses the nature and implications of the changes to the Bevill criteria used to prepare today's proposed rule. In this way, EPA can provide responses to the issues raised in public comment, as well as articulate the effects of the new Bevill criteria, on a waste-specific basis.

EPA proposed fifteen waste streams for continued exclusion from Subtitle C under the Bevill Amendment in its October 20, 1988, proposal:

(1) Copper smelting slag;
(2) Copper process wastewater;
(3) Copper acid plant blowdown;
(4) Copper bleed electrolyte;
(5) Lead smelting slag;
(6) Zinc process wastewater;
(7) Zinc acid plant blowdown;
(8) Bauxite red and brown muds;
(9) Phosphogypsum;
(10) Elemental Phosphorus Slag;
(11) Iron Blast Furnace Slag;
(12) Iron Blast Furnace APC Dust/Sludge;
(13) Lime Kiln APC Dust;
(14) Waste Acids From Titanium Dioxide Production; and
(15) Chromite Ore Roasting/Leaching Slag.

Although each of the wastes proposed for exclusion met the mineral processing definition and, tentatively, the high volume criterion articulated in the preamble to the proposed rule, none had, at that point, been evaluated with regard to hazard. As explained in detail elsewhere, however, the basis of today's proposed rule includes a low hazard criterion. Therefore, because of the hazard criterion, new waste nominations, and data limitations, the group of wastes proposed for exclusion today is different than the group of fifteen proposed in October.

In addition to reflecting the new hazard criterion, the list of wastes provisionally proposed for exclusion in today's rule includes wastes nominated in public comment on the previous NPRM. After considering the available data, the Agency has decided that it has sufficient data to propose the exclusionary status of nine high volume mineral processing waste streams, some of which were previously proposed and some of which were nominated in public comment. Of those waste streams, six meet both the high volume and low hazard criteria and thus are proposed for exclusion, while three waste streams fail the low hazard criterion and thus would be removed from the Bevill exclusion and regulated under Subtitle C if they exhibit hazardous characteristics. Of the many wastes nominated for exclusion by commenters, approximately thirty-three appear to meet the revised high volume criterion. Because, however, the Agency does not have sufficient data at this time to determine whether these wastes meet the low hazard criterion, EPA proposes to conditionally retain them within the Bevill exclusion until January 15, 1990. The regulatory status of these wastes will be addressed in a subsequent rulemaking scheduled to be proposed on or before September 15, 1989.

In response to the 10/20/88 proposed rule, commenters nominated many additional waste streams that they believed should be retained within the Bevill exclusion. EPA has reviewed these nominations and, in most instances, has concluded that these additional wastes should not be afforded special waste status. The reasons for these waste-specific decisions are varied; some wastes did not meet the definition of mineral processing wastes (e.g., are beneficiation or alloying wastes), while others are generated by processes that are outside the scope of this rulemaking

(e.g., secondary metal production). The most common reason, however, for rejecting claims of Bevill status was that the nominated materials are not high volume wastes.

Comments on the proposed Bevill status of the 15 original wastes are presented below. Responses to most of these comments may be found in Part IV, below.

Wastes Identified in the October 20, 1988 Proposed Rule as Special Mineral Processing Wastes

(1) *Slag from Primary Copper Production.* Several commenters supported the proposal to retain this waste under the Bevill exclusion and requested clarifications of the waste definition. One commenter suggested that because slag, acid plant blowdown, process wastewater, and wastewater treatment sludges from the processing of primary copper are comprised of groups of wastes that possess similar characteristics and are managed in similar ways, each waste should be considered a single waste stream. Moreover, this and another commenter stated, EPA should include in the definition of slag from primary copper smelting both slag from converter operations and slag from anode furnace operations. In addition to asking for clarifications, several commenters provided detailed process descriptions in an attempt to demonstrate that the slag and effluent resulting from primary copper processing are not hazardous.

In contrast to these statements, several commenters argued that this waste should not be retained within the Bevill exclusion. One commenter noted that EPA data indicate that one sample of slag exceeded EP-toxicity limits for arsenic, cadmium, and lead. A second commenter indicated that it had purchased primary copper slag from a mineral processor for use in road construction. This commenter contended that the generator of the slag failed to assess the suitability of the copper smelting slag for reuse or to warn users of its potential hazards. The commenter also stated that copper smelting slag can release large amounts of hazardous metals when disposed of in an ordinary manner or when reused as a substitute for rock or gravel. Moreover, the commenter argued, because copper slag is responsible for documented, significant environmental damage, EPA should remove this waste from the Bevill exclusion.

As indicated earlier in this preamble, EPA has elected to continue to consider reactor slag, converter slag, and anode furnace slag to be one waste stream, and has evaluated its eligibility for continued exclusion under Bevill on that basis.

(2) *Process Wastewater From Primary Copper Production.* Several commenters expressed support for retaining this waste within the Bevill exclusion and suggested that the definition of the waste be expanded. One commenter suggested that EPA consider all residuals from the treatment of process wastewater as one aggregate waste stream, while another commenter noted that a representative of EPA had assured the American Mining Congress that wastewater streams separated from copper smelter acid plant blowdown could constitute "process wastewater." Finally, several commenters stated that process wastewater from primary copper processing should also include contact cooling water from primary copper production. One of these commenters argued that EPA should apply the 50,000 metric tons per year test to the aggregate quantity of both process wastewater and contact cooling water because there is no logical reason to distinguish between the two waste streams. Another contended that EPA, not industry, made the first distinction between "process wastewater" and "contact cooling water."

In contrast to these arguments, one commenter argued against retaining this waste within the Bevill exclusion. This commenter contended that wastewater from primary copper processing is frequently managed in unlined surface impoundments and that, according to EPA data, this wastewater regularly fails the EP-toxicity test for arsenic, cadmium, and mercury. Therefore, the commenter argued, this waste should be removed from the Bevill exclusion.

(3) *Acid Plant Blowdown From Primary Copper Production.* Several commenters expressed support for retaining this waste in the Bevill exclusion. One commenter indicated that it generated a new waste stream that is very similar to acid plant blowdown, and contended that this waste stream, called Lurgi scrubber effluent, should be combined with acid plant blowdown for analytical and exclusionary purposes because, in addition to physical and functional similarities, the two waste streams are co-managed at the commenter's facility. The commenter indicated that the acid plant blowdown and Lurgi scrubber effluent are mixed with alkaline tailings, which generates a neutral waste (Lurgi effluent has a pH of 1.7 before being mixed with tailings, after which it has a pH of 7.0 to 8.0). A second commenter simply stated that the definition of hazardous waste K064 should specify that this listed hazardous waste is limited to thickened acid plant blowdown that is disposed in surface impoundments.

In contrast to these arguments, a commenter contended that this waste is frequently managed in unlined surface impoundments and that according to EPA data, acid plant blowdown from primary copper processing routinely fails the EP-toxicity test for arsenic, cadmium, and mercury. Therefore, this commenter argued, this waste should be removed from the Bevill exclusion.

EPA agrees that, because Lurgi scrubber effluent is generated by a pollution control process similar to that used in typical metallurgical acid plants, this waste stream should be afforded status similar to acid plant blowdown from primary copper production. Accordingly, the Agency has broadened the definition of this latter waste stream to include Lurgi scrubber effluent.

(4) *Bleed Electrolyte From Primary Copper Production.* One commenter described the recycling process it uses to manage its bleed electrolyte from primary copper processing, in order to demonstrate that this waste does not pose a threat to human health and the environment. Nonetheless, this commenter admitted that due to impurities in anode copper, bleed electrolyte may exhibit the hazardous waste characteristics of EP-toxicity and corrosivity. A second commenter noted that this waste is frequently managed in unlined surface impoundments. This commenter argued that, according to EPA data, bleed electrolyte from primary copper processing routinely fails the EP-toxicity test for arsenic, cadmium, and mercury and that this material, therefore, should be removed from the Bevill exclusion.

(5) *Slag From Primary Lead Production.* The only comments that EPA received concerning this waste stated that the waste should not be retained within the Bevill exclusion. These commenters noted that EPA data indicate that 28 percent of slag from primary lead processing is placed in unlined storage facilities while 24 percent is placed in unlined disposal facilities. These commenters also noted that in EPA sampling efforts, 13 of 17 samples of slag from lead processing facilities showed evidence of EP-toxicity. Moreover, except for "de-zinced" slag, all samples of hot-dumped or granulated slag were EP-toxic. Finally, water extract samples of slag displayed lead and cadmium leachability in excess of the toxicity characteristic regulatory levels. Therefore, these commenters concluded, based upon its own data, EPA should

withdraw slag from primary lead processing from the Bevill exclusion.

(6) *Process Wastewater From Primary Zinc Production.* The only comments received concerning this waste were in opposition to retaining it within the exclusion. Commenters noted that all EPA samples of process wastewater from the zinc industry showed evidence of EP-toxicity from cadmium. These commenters also noted that some facilities in this sector already manage this waste as a hazardous waste. Therefore, these commenters concluded, EPA should withdraw process wastewater from primary zinc processing from the Bevill exclusion.

(7) *Acid Plant Blowdown From Primary Zinc Production.* The only comments received concerning this waste were in opposition to retaining it within the exclusion. Commenters noted that one of two samples of acid plant blowdown exhibited EP toxicity and failed the test for corrosivity. These commenters also noted that some facilities in this sector already manage this waste as a hazardous waste. Therefore, these commenters concluded, EPA should withdraw acid plant blowdown from primary zinc processing from the Bevill exclusion.

(8) *Red and Brown Muds From Alumina Production.* Commenters representing diverse interests agreed that red and brown muds are low hazard wastes. One commenter, however, contended that red and brown muds have already been studied and should properly be considered extraction and beneficiation wastes. The only other comment received regarding this waste stated that red scale produced at a plant is composed of the same material as red mud and that both this red scale and pisolites should be included with red and brown muds under the Bevill exclusion.

For purposes of analysis and regulatory action, EPA considers pisolites to be a component of red muds, but considers red scale to be a cleaning waste that is not a mineral processing waste, and therefore, is outside the scope of the Bevill exclusion.

(9) *Phosphogypsum From Phosphoric Acid Production.* Several commenters expressed support for the exclusion of phosphogypsum under the Bevill Amendment and suggested expanding the materials included under the definition of this waste. These commenters argued that EPA should modify the definition of phosphogypsum to include the associated solids and liquids from the processing of phosphate rock. One commenter also suggested that EPA expand the scope of the Bevill exclusion to include waters used for flash coolers, barometric condensers, evaporators, air pollution control equipment, phosphogypsum filters, and other related equipment.

In contrast, one commenter objected to the continued exclusion of phosphogypsum under Bevill. This commenter contended that some Florida residents are concerned that phosphogypsum stacks may be exempted under Bevill even though the wastes are not actually "low hazard." The commenter argued that phosphogypsum is hazardous because the concentrations of the radionuclide Radium 226 in EPA samples were consistently in the 25 to 35 pCi/g range. The commenter argued further that phosphogypsum stacks pollute ground water, rivers, bays, and the air. Noting that in Florida, phosphogypsum is being stockpiled increasingly close to heavily populated areas, and that by the year 2000 there will be over one billion tons disposed in Florida, the commenter concluded that phosphogypsum should be withdrawn from the Bevill exclusion and subjected to special management standards due to the hazardous nature (e.g., residual radioactivity) of the waste.

EPA rejects the suggestion that the definition of phosphogypsum be broadened to include any of the various water streams that may be mixed with and used to transport the waste gypsum to its disposal area (generally a gypsum stack). Although facilities may operate their waste management operations in an integrated fashion, the actual generation of waste gypsum and process wastewater in the phosphoric acid production process derive from different steps in the process and have very different characteristics, and hence, will be considered separately for analytical and regulatory purposes.

(10) *Slag From Elemental Phosphorus Production.* The only comment received regarding this waste stated that EPA's proposal to include phosphorus slag among the wastes to be studied further is appropriate. The commenter argued further that the slag has been used in the construction industry and has not imposed any adverse effects on human health.

(11) *Iron Blast Furnace Slag.* A number of commenters argued that iron blast furnace slag is not a waste but a valuable material. These commenters noted that such slag has been defined as a product by the American Society of Testing and Materials, that at present 75 to 100 percent of all the slag produced is recovered as useful product and is often used as a replacement for scrap in steel mills, and that the U.S. is currently importing this material for industrial use. Moreover, several commenters argued, iron blast furnace slag is not a hazardous waste, has no history of displaying hazardous characteristics, and has even been used to stabilize hazardous and radioactive wastes prior to disposal. Therefore, at least one commenter concluded, iron blast furnace slag should be permanently excluded from regulation under EPA's hazardous waste rules.

EPA included iron blast furnace slag on the original list of 15 wastes proposed for exclusion because preliminary information indicated that this material is either disposed or used in a manner constituting disposal (i.e., directly on the land) at some facilities. Therefore, iron blast furnace slag may be a solid waste at some facilities and is, for purposes of this proposal, considered a solid waste. If retained within the Bevill exclusion in the final rule, the disposition of this slag would be addressed in the Report to Congress.

(12) *APC Dust From Iron Blast Furnaces.* No comments were received regarding the proposed exclusion of APC dust from iron blast furnaces under the Bevill Amendment.

(13) *Lime Kiln APC Dust/Sludge.* One commenter stated that there are no hazardous wastes produced from air pollution control operations at lime kilns. This commenter also stated that studying the lime industry is unnecessary. The only other comments regarding this waste argued that lime kiln APC dust should be withdrawn from the Bevill exclusion because this waste does not pass nationwide waste generation test of the high volume criterion.

(14) *Waste Acids From Titanium Dioxide Production.* Several industry commenters suggested revisions to the definition of this waste. One commenter suggested that EPA's definition be modified in order to avoid discriminating against producers of titanium metal, requesting that the definition read "waste acids from the processing of titanium bearing ore." This commenter noted that such an action would treat equally all processors of titanium bearing ore which produce the same acid wastewaters. Several other commenters suggested that in order to clarify that chloride process wastes result from the production of titanium tetrachloride, which is an intermediate in the production of titanium dioxide, the waste stream should be defined as "waste acids and contained solids from titanium tetrachloride and titanium dioxide production and related air pollution control devices."

Several commenters expressed opposition to the continued exclusion of this waste. They argued that certain facilities already manage titanium dioxide acids as hazardous wastes, thus demonstrating that the management of these wastes under Subtitle C is technically and economically feasible.

EPA agrees that it should recognize differences in processes as well as the dissimilar components of waste streams that are generated from titanium ore processing. Accordingly, EPA will make separate Bevill exclusion decisions for sulfate process waste acids, sulfate process waste solids, chloride process waste acids, chloride process waste solids, and leach liquors, and will consider all facilities that are primary producers of either titanium metal or titanium dioxide.

(15) *Chromite Ore Roasting/Leaching Slag.* One commenter contended that chromite ore roasting/leaching slag is a low hazard waste. This commenter argued further that the exclusion of such slag under the Bevill Amendment should include all slags disposed in the past. Another commenter suggested that for clarity, "chrome ore tailings and chromium-contaminated waste" should be substituted for "slag" in the text of the proposed rules. Finally, the operator of one chromite ore processing facility indicated that its roasting/leaching slag is generated at a rate high enough to surpass EPA's proposed cut-off rate of 50,000 metric tons per year, but did not provide a quantity.

EPA rejects the suggestion that the definition of this waste should be broadened in any way. For clarity, however, this candidate special waste is, in today's proposal, referred to as "roast/leach ore residue from primary chrome ore processing."

E. Related RCRA Issues

1. Applicability of the Mixture Rule

The October 20, 1988 proposal to reinterpret the scope of the Bevill exclusion as it applies to wastes from mineral processing operations contained specific language indicating that mixed waste streams would be removed from the Bevill exclusion if they are mixtures of (1) characteristic hazardous waste(s) and a Bevill-excluded waste that continues to exhibit one or more hazardous characteristics, or (2) any listed hazardous waste and a Bevill-excluded waste. Several commenters opposed the application of the mixture rule to Bevill wastes, contending that EPA cannot legally apply the mixture rule to any mixtures containing Bevill wastes, because Bevill wastes are temporarily exempt from all Subtitle C requirements, including the mixture rule.

Several commenters also maintained that applying the mixture rule and not excluding Bevill wastes that are mixed with hazardous waste is unrealistic; many mineral processing facilities combine their waste streams with those generated by beneficiation and other processing operations in common tailings or evaporation ponds. Furthermore, while much of the justification for co-management is economic or technical in nature, commenters indicated that often the practice is employed for environmental and regulatory reasons, i.e., Bevill wastes may be co-managed in order to comply with non-RCRA regulatory requirements such as NPDES permit limitations.

Some commenters specifically argued that the interpretation of the mixture rule with regard to co-management with a characteristic hazardous waste is overly restrictive. Mixing low volume characteristic hazardous wastes with high volume Bevill wastes that also exhibit a characteristic of hazardous waste often does not appreciably change the characteristics of the waste mixture and hence, its environmental impact. In cases where waste mixtures display none of the characteristics of a hazardous waste other than those exhibited by the Bevill waste alone, the commenters contended that environmental protection is not improved by depriving the mixture of its Bevill exclusion.

Therefore, several commenters recommended that EPA suspend or modify the mixture rule as applied to mineral processing wastes, thus permitting the co-mingling of wastes and avoiding imposition of a less effective and environmentally protective waste management system. One commenter specifically recommended that EPA determine that when a Bevill waste is intentionally mixed with another waste stream in order to treat that waste, and thereby achieve compliance with other regulatory requirements (e.g., NPDES permit limitations), the resulting treated waste would retain its exempt status. Another commenter requested specifically that EPA modify its interpretation of the mixture rule so that the rule would be inapplicable to mixtures of Bevill waste and recently listed hazardous wastes from mineral processing. Finally, several commenters requested that the final rule be altered so that mixtures of Bevill wastes and relatively small quantities of non-Bevill hazardous wastes retain their Bevill status so long as the only hazardous characteristics displayed are those displayed by the Bevill waste alone.

Some commenters contended that precedent exists for EPA to modify the regulations regarding mixtures. They argued that EPA has authority from various sections of RCRA, in particular the Simpson Amendment (section 3004(x)) and section 3004(a), to modify regulation of certain wastes to allow for special circumstances. They also maintained that in the past EPA has indicated that *de minimis* quantities of hazardous wastes that are mixed with Bevill wastes would retain their excluded status (e.g., in a letter from EPA to the Utility Solid Waste Activities Group dated January 13, 1981), establishing a precedent for exempting certain co-mingling practices from the mixture rule. Finally, some commenters contended that EPA has previously articulated a modified mixture rule position regarding the injection of methanol into extraction wellheads by the oil and gas industry in its Report to Congress on oil and gas wastes.[6] In light of these precedents and in keeping with Congressional intent, these commenters indicated that EPA can and should exempt and study large volume, co-mingled, exempt/nonexempt waste streams before making any final determinations.

After review of these comments and further analysis, EPA has resolved to continue to apply the mixture rule to Bevill and non-Bevill mixed waste streams under almost all circumstances, because to do otherwise would allow many small volume mineral processing wastes to remain effectively excluded from potential Subtitle C regulation, which would be inconsistent with both Congressional intent and the decision of the Court in *EDF* v. *EPA*, and might not be adequately protective of human health and the environment. Therefore, mixtures of one or more listed hazardous wastes and a large volume, low hazard mineral processing waste will be considered a hazardous waste unless and until the mixture is delisted.[7]

EPA has decided, however, that it is appropriate to revise the proposed regulatory status of some mixtures of non-excluded "characteristic" wastes and Bevill wastes. In these instances,

[6] U.S. EPA. *Report to Congress: Management of Wastes from the Exploration, Development, and Production of Crude Oil, Natural gas, and Geothermal Energy.* December 1987, p. II–17.

[7] Unless the hazardous waste is listed only because it exhibits a hazardous characteristic; in that instance, the waste is not considered hazardous when and if it no longer exhibits any of the four characteristics of a hazardous waste (40 CFR 261.3(a)(2)(iii)).

the *mixture* will be considered a hazardous waste if it exhibits one or more of the same hazardous characteristics that are exhibited by the non-excluded waste. If the mixture exhibits one or more hazardous characteristics that are exhibited by the Bevill waste but *not* by the non-excluded characteristic waste, then the mixture is *not* a hazardous waste.

EPA wishes to make clear, however, that in any case, mixing a characteristic hazardous waste with a Bevill waste would constitute treatment of a hazardous waste, which would require a RCRA treatment, storage, or disposal permit (Section 3005 "Part A" permit) for interim status, and, subsequently, a final RCRA Part B permit.

EPA will consider modifying the regulatory language addressing the mixture rule found at 40 CFR 261.3(d) to reflect its final position on the applicability of the mixture rule to Bevill mineral processing wastes, and hereby solicits public comment on this issue.

2. Applicability of the Derived-From Rule

The proposed rule contained no explicit discussion of the interaction of the derived-from rule with the mineral processing waste exclusion. Several commenters, however, raised this issue by requesting clarification of the status of wastes generated from co-combustion of hazardous wastes with minerals or ores in mineral processing furnaces.

Several commenters indicated that hazardous waste is regularly burned as fuel in the kilns of lightweight aggregate producers. These commenters contended that this activity is an environmentally sound hazardous waste management practice that advances the objectives of RCRA and, moreover, has been considered within the Bevill exclusion as a matter of Agency policy. These commenters were concerned that a restrictive application of the derived-from rule might prevent or discourage this type of practice within the industry. They suggested that EPA disregard the Subtitle C derived-from rule where mineral processing is involved, effectively allowing wastes generated from processes that burn hazardous waste in mineral processing furnaces to be eligible for retention within the Bevill exclusion.

In contrast, some commenters believed that the application of the derived-from rule prohibits EPA from excluding wastes from mineral processing operations that burn hazardous waste as fuel. They argued that the language of the Bevill Amendment applies only to the extraction, beneficiation, and processing of ores and minerals and does not include or even mention hazardous wastes. Therefore, noted one commenter, any attempt to expand the statutory exemption to encompass residues from the co-burning of hazardous and mineral processing wastes would be counter to Congressional intent and, in fact, unlawful. Furthermore, argued commenters, processes generating these co-combustion wastes fail to satisfy the fifth attribute of the definition of mineral processing listed in the proposed rule (i.e., they represent operations that combine ores or minerals with materials that are not ores or minerals). Therefore, they requested that EPA state explicitly in the final rule that the mining waste exclusion does not encompass residues generated from the co-burning of hazardous wastes with ores and minerals in mineral processing furnaces.

As a potential precedent for excluding these derived-from wastes, several commenters addressed the exclusion of wastes generated from the combustion of hazardous wastes and fossil fuels in coal-fired utility boilers, another group of special wastes excluded from regulation under the Bevill Amendment. These commenters pointed out, however, that the language of the Bevill Amendment acknowledges co-combustion as a common and accepted practice in the utility industry, but not in the mining industry. Therefore, these commenters contended, residuals from the burning of hazardous waste in mineral processing furnaces should not be excluded under the Bevill Amendment even though this practice is allowed under regulations applied to the utility industry. In a similar request, other commenters, concerned that a new interpretation could affect special wastes from coal combustion, requested that EPA apply any interpretations concerning wastes from co-combustion of hazardous wastes with mineral feedstocks only to Bevill exclusion decisions concerning mineral processing wastes (i.e., not to coal combustion wastes).

The Agency has reviewed these comments and evaluated several options regarding the derived-from rule. EPA will clarify the application of the derived-from rule in a supplemental notice (expected in mid-1989) to the May 6, 1987, proposed rules for boilers and industrial furnaces burning hazardous waste. In the interim, the Agency adheres to its prior statements on this issue, i.e., that wastes from co-managing hazardous wastes and Bevill materials remain within the scope of the Bevill exclusion so long as the character of the residues is not significantly affected by the hazardous waste management activity. See 50 FR 49190 1189 (Nov. 29, 11985); 52 FR 17012–13 (May 6, 1987) for further information.

3. The Status of Future Mineral Processing Wastes

Several commenters disagreed with EPA's proposed approach wherein wastes not presently existing or currently meeting the high volume criteria could not be considered for special waste status in the future. They contended that permanently removing mineral processing wastes from the Bevill exclusion in the future is contrary to Congressional intent in that the Bevill Amendment includes no time limits. These commenters argued that limiting this reinterpretation to a specific list of wastes currently meeting the criteria would stifle and frustrate future industry innovations, at a time when the minerals industry is striving to develop new concentration technologies that would produce substantial and varied waste streams. As an example, they noted that the steel industry is currently working on process development for direct steel-making, based on in-bath smelting and continuous refining. If successful, this could lead to the development of totally new processes with environmental and process advantages over current technology, but which would also create new types of waste streams.

Some commenters argued, therefore, that EPA is obligated to study and issue a regulatory determination for any waste that may meet EPA's criteria in the future. They also argued that it is more appropriate to define the scope of the Bevill exclusion for mineral processing wastes directly by the criteria instead of creating a list of wastes that EPA data indicate meet the specified criteria. Using criteria instead of creating a list would allow for the effects of changing market conditions and new mineral processing technologies. These commenters recommended, therefore, that EPA amend the proposed rule to include a provision whereby if a waste qualifies as a high volume waste in the future, it would become subject to the provisions of the Bevill Amendment.

After reviewing these comments and examining the history of the Bevill exclusion in depth, EPA has decided to maintain its proposed approach and make a one-time reinterpretation of the scope of the Bevill exclusion for mineral processing wastes. EPA recognizes that technological advances and changing market conditions may lead to the genesis of new waste streams and/or the generation of existing waste streams

in larger quantities. This is, however, irrelevant to a determination of the proper scope of the Bevill exclusion. Moreover, EPA believes that a one-time decision will serve to encourage rather than discourage environmentally sound mineral production and waste treatment process innovations.

Both the administrative record and Congressional intent clearly indicate that the Bevill Amendment was intended to provide a temporary exclusion, pending further study, over a fixed time period. Congress directed EPA to conduct a single study of wastes generated by mineral mining and processing facilities, because of concern that existing wastes might not be readily amenable to Subtitle C controls and might pose relatively low hazard to human health and the environment. Moreover, contrary to some commenter's assertions, the statutory language includes explicit time limits on the Bevill exclusion, which apply to the submission of the required Report to Congress and subsequent regulatory determination.

In addition, EPA believes that making a one-time reinterpretation is not contrary to the interests of either industry or the environment. With regard to the concern raised by several commenters that the development of new technologies would be stifled, EPA notes that any new wastes generated in the future will be regulated under an established regulatory scheme (i.e., either the Subtitle C or D program). Therefore, rather than facing regulatory uncertainty and incentives to generate large volumes of any new mineral processing wastes, industry will instead have substantial knowledge of the regulatory regime that it will face. Moreover, in keeping with recent EPA policy initiatives, industry will have a clear incentive to ensure that process changes or waste treatment technologies that it develops will generate non-hazardous wastes and waste treatment residuals.

EPA also believes that basing Bevill exclusion determinations on historical waste generation rates will not provide any disincentives for continuing existing waste reduction initiatives. Because the criteria would be applied to wastes and volumes of wastes that were generated between 1983 and 1988, no incentive exists for a facility to increase (or decide not to treat and/or decrease) its generation of a particular mineral processing waste in the future in order to meet the criteria.

4. The Status of Historical Accumulations of Mineral Processing Wastes

As EPA stated in the preamble to the proposed rule, a number of mineral processing wastes that have been provisionally excluded from regulation as hazardous wastes by EPA's 1980 interpretation of the Bevill Amendment would become subject to RCRA Subtitle C regulations if they exhibit hazardous characteristics. Several commenters indicated concern that the implications of the proposed rule have not been completely articulated, stating that the proposed rule is not clear about whether existing waste management units at active or potentially active facilities would be subject to Subtitle C requirements if the wastes they contain exhibit hazardous characteristics.

These commenters contended that if wastes removed from the Bevill exclusion under the final rule are retroactively subjected to Subtitle C requirements, large cost impacts associated with closure and post-closure care of existing storage and disposal units would occur. Therefore, they argued that in resolving this issue, EPA must consider costs, technical feasibility, Subtitle C landfill capacity, and other practical problems. One commenter added that retroactive application of Subtitle C to wastes withdrawn from Bevill by this proposal is not only unwarranted but potentially unlawful. Other commenters expressed concern that the retroactive application of the mixture rule, particularly in cases in which the vast majority of the waste is exempt, was never anticipated by Congress and would entirely eviscerate the Bevill Amendment exclusion.

Many commenters argued that EPA must clarify its position on this issue in the final rule. Some commenters recommended that existing wastes be "grandfathered" and any new Subtitle C regulation of processing wastes should only occur prospectively. Some suggested that this could be accomplished by explaining in the preamble that wastes disposed of prior to the effective date of the rule would continue to be considered excluded if either (1) they would be excluded under the new rule or (2) they would reasonably have been considered excluded under interpretations existing at the time of disposal.

In keeping with EPA's long-standing policy, the Agency intends to treat non-excluded mineral processing wastes that are disposed prior to the effective date of the rule that makes them subject to Subtitle C requirements (in this case, as a result of this proposed reinterpretation of the Bevill exclusion) as not being subject to direct Subtitle C controls such as closure and post-closure care requirements. Therefore, existing accumulations of waste that were tentatively considered to be excluded from Subtitle C requirements by the Bevill amendment prior to the effective data of this proposed reinterpretation would not be subject to direct Subtitle C controls unless and until the accumulated wastes are actively managed (i.e., accumulations left undisturbed will not be subject to Subtitle C regulation). The waste management units that contain these wastes might, however, be subject to the requirements for solid waste management units promulgated pursuant to section 3004(u) of RCRA, if the facility were otherwise subject to RCRA Subtitle C permitting requirements.

5. RCRA Section 3004(x)

As part of the 1984 HSWA Amendments, Congress incorporated a provision that allows the EPA Administrator to relax certain of the Subtitle C standards contained in the new amendments as they relate to the management of mining wastes, utility wastes, and cement kiln dust waste. This provision, found at section 3004(x), is commonly called the Simpson Amendment. The Simpson Amendment allows EPA to modify the minimum technical standards for the design, construction, and operation of waste management units, land disposal restrictions, and corrective action requirements for continuing releases, as long as protection of human health and the environment is assured.

One commenter contended that EPA should exercise the authority provided by the Simpson Amendment to modify the Subtitle C technical standards for the wastes that would be removed from the Bevill Amendment exclusion. This commenter argued further that modified requirements should follow the Subtitle D program being developed for extraction and beneficiation wastes.

EPA believes that the provisions of section 3004(x), and hence, the opportunity for flexible application of Subtitle C requirements, apply only to the special wastes identified in the statute. Accordingly, section 3004(x) would not apply to wastes that are not special wastes and that would therefore be removed from the Bevill exclusion by this proposed rule. Although the Agency might, under other circumstances, be willing to consider modifying the technical standards of Subtitle C to account for unique or unusual

characteristics of mineral processing operations (as long as the revised standards would ensure protection of human health and the environment), EPA does not have the authority to apply the flexibility afforded by section 3004(x) to materials that are not special wastes.

IV. Changes to the October 1988 NPRM

Today's proposed rulemaking contains several substantial changes from the October 20, 1988 NPRM. The primary changes are to the criteria used for selecting the specific wastes proposed for retention within the Bevill exclusion. In particular, today's rule modifies the "high volume" criterion and adds, for the first time, an explicit criterion for identifying "high hazard" mineral processing wastes. Although basically unchanged from the October 20, NPRM, the criteria used to define "mineral processing waste" are further clarified in this NPRM.

Following analysis of public comments received on today's proposal, EPA will, by August 18, 1989, finalize this rulemaking. Although the status of the wastes that are today proposed to be conditionally retained within the Bevill exclusion will be considered in a subsequent rulemaking, no changes to the mineral processing "special waste" criteria will be entertained after August 18, 1989. The subsequent proposal (by September 15, 1989) will simply apply the final Bevill mineral processing waste criteria to the conditionally excluded wastes, in light of additional data that EPA will collect during the next several months.

A. Addition of a Low Hazard Criterion

As discussed above, in light of public comments and further internal analysis, EPA has decided to include in this proposal a criterion by which to address the "low hazard" aspect of the "special wastes" concept. The purpose of this new hazard criterion is to identify candidate Bevill mineral processing wastes that pose an unambiguously high level of hazard to human health and/or the environment. EPA believes that any waste failing such a criterion is sufficiently hazardous to justify immediate Subtitle C regulation, rather than postponement pending completion of the 8002(p) study and subsequent regulatory determination. Moreover, such wastes should not, in the Agency's view, be eligible for any permanent exclusion from Subtitle C regulation, irrespective of volume, costs of controls, or any of the other section 8002(p) study factors. Hence, these wastes should not qualify as "special wastes." EPA wishes to emphasize that the use of the criterion would be restricted to this and the subsequent rulemakings regarding which mineral processing wastes are temporarily exempted from Subtitle C requirements by the Bevill Amendment (i.e., those addressing the proposed and final status of candidate Bevill mineral processing wastes), because it is a screening criterion specifically intended for identifying mineral processing wastes that are also special wastes. The Agency does not contemplate, for example, using the Bevill hazard criterion in making hazard determinations under RCRA Section 3001(a), or as an ARAR in assessing potential remedies at CERCLA mining sites or, necessarily, as the basis for subsequent determinations as to which temporarily excluded wastes should be regulated under Subtitle C. With respect to CERCLA sites, any processing waste which does not pass the Bevill hazard criterion will be treated identically to any other hazardous waste in establishing ARARs. If a processing waste does pass the Bevill hazard criterion, RCRA Subtitle C requirements will not be applicable, but may be relevant and appropriate.

In today's proposal, all high volume mineral processing wastes that are low hazard based on currently available data and the hazard criterion described in the proposal are proposed for continued temporary exclusion from RCRA Subtitle C requirements under the Bevill Amendment. Large volume mineral processing wastes that are not low hazard based on currently available data and the hazard criterion, and which the Agency today is proposing to remove from the Bevill exclusion, are identified below. EPA believes that these materials pose a sufficiently high hazard to demonstrate that they are not special wastes. The data used to make these proposed decisions are presented in Appendix I.

A number of additional wastes do, according to available data (including data submitted in public comment on the October 20, 1988 NPRM), meet EPA's criteria for high volume mineral processing wastes. The Agency does not, however, possess sufficient data at this time to apply the hazard criterion to these wastes. Hence, EPA is today proposing to retain these wastes within the exclusion on a conditional basis. Upon development of the necessary data, EPA plans to propose, by September 15, 1989, which of the wastes in this group qualify as special wastes. A final rulemaking on the status of this group of wastes is planned to occur by January 15, 1990. All wastes that are found to meet the final processing, volume, and hazard criteria will be subjected to further study according to the provisions of RCRA section 8002(p) and a subsequent regulatory determination pursuant to section 3001(b)(3)(c).

The criteria EPA has developed for this rulemaking are intended to identify those mineral processing wastes that are clearly not "special wastes". Because the "low hazard" criterion is a screening criterion for determining which high volume wastes will be subject to special study and regulatory consideration, rather than a criterion that will determine the final regulatory status of a waste, EPA believes that it is appropriate to use a measure of hazard that identifies highly hazardous wastes. This measure need not be identical to the characteristics tests that EPA has promulgated under section 3001(a) of RCRA to identify hazardous wastes. As discussed above, some wastes that fail these tests may still be appropriate for further study and possible permanent exclusion from Subtitle C, as EPA determined for mineral extraction and beneficiation wastes (see 51 FR 24496). The U.S. Court of Appeals for the D.C. Circuit has already agreed that the hazardous characteristic tests need not, by themselves, be determinative of the ultimate regulatory status of special wastes (852 F.2d at 1314).

To develop a hazard criterion, EPA looked at the four types of waste characteristics that are generally used to identify wastes that are hazardous (i.e., ignitability, corrosivity, reactivity, EP toxicity). The ignitability and reactivity tests used to identify wastes that exhibit hazardous characteristics, however, are such that they can not be readily "relaxed" for use as part of a screening criterion. In addition, the Agency currently has virtually no information on the potential reactivity or ignitability of any mineral processing wastes. Therefore, the hazard criterion described in today's proposal is based on the other two types of tests, which have been or will be applied to those mineral processing waste streams meeting the high volume criterion: (1) A pH test and (2) a mobility and toxicity test. Candidate Bevill wastes must pass both of these tests to be eligible to remain within the exclusion.

The pH test that EPA is using requires that a mineral processing waste have a pH between 1 and 13.5 to be considered a "special waste". This criterion represents a one order of magnitude "relaxation" of the pH levels used to identify corrosive hazardous wastes.

The proposed mobility and toxicity test parallels the EP toxicity test used to

identify solid wastes that exhibit hazardous characteristics, but utilizes a different leaching procedure and leaching medium to predict the mobility of contaminants. Mineral processing waste samples prepared for analysis according to this procedure will provide the basis for determining mobility and toxicity. Concentrations of constituents in the resulting extracts will then be compared with 100 times Maximum Contaminant Levels (MCLs) as promulgated under authority of the Safe Drinking Water Act for each of the standard EP toxicity test contaminants. The dilution factor of 100 is consistent with that used in the EP and TCLP procedures.

The Agency is proposing to use a recently developed synthetic precipitation leaching procedure (Method 1312) to predict the mobility of contaminants in candidate low hazard wastes. In addition, the proposed (54 FR 3212, January 23, 1989) mandatory quality assurance/quality control procedures described in Chapter One of SW–846 would also apply to this method. Method 1312 simulates the leaching process created by acidified precipitation percolating through a waste. The Agency believes that this leaching procedure is the appropriate method to use in screening the mobility and toxicity of these particular large volume wastes to determine whether they are clearly not low hazard wastes.

Using Method 1312, which is fully described in the docket for today's proposal and is available through the RCRA Hotline, the waste is mixed with a mildly acidic aqueous leaching medium, and the mixture is agitated to extract any mobile toxicants present in the waste. The acidity and composition of the leaching fluid are designed to simulate the acidity of rainfall that occurs in the general region of the country where the waste is managed (i.e., east or west of the Mississippi River). The resulting extract is then analyzed via established SW–846 analytical methods to determine the degree to which contaminants might leach out of the waste and migrate away from the disposal area.

While the Agency has not yet completed its evaluation of Method 1312, work conducted to date indicates that the procedure is of acceptable precision. A recent study (EMSL, 1989) [8] indicates that Method 1312 produces a reasonably precise measurement of the mobilization of organic compounds and certain metals from soil. The method was also found to be fairly robust with respect to the effects of small variations in extraction fluid pH, waste-extraction fluid contact time, and the ratio of extraction fluid to waste. Based on the results of this study and the similarity of Method 1312 to the more completely evaluated Method 1311 (the Toxicity Characteristic Leaching Procedure) on which it is based, the Agency feels confident in using Method 1312 for this application.

Because Method 1312 is a new procedure, the Agency has not yet completed its evaluation of the testing procedure and does not currently possess data from its application to mineral processing wastes. The Agency does, however, have data from neutral water testing of several candidate special mineral processing wastes upon which to base today's proposal. These water extract data serve as the primary basis for making the limited number of proposed Bevill exclusion decisions that are listed below. Because neutral water is only slightly less aggressive than the Method 1312 leaching medium, the Agency believes that any wastes excluded based on neutral water extract data would also be excluded using Method 1312. In cases where the Agency did not have neutral water data, EPA made limited use of Method 1310 (the EP-Toxicity Test Procedure) extract data. If Method 1310 indicated that a waste had low leaching potential, the Agency assumed that Method 1312 data would yield a similar result, because the Method 1310 extraction medium is generally a more aggressive extraction medium than that used in Method 1312. That is, if a waste passes the Extraction Procedure Toxicity Test procedure, it would almost certainly not exceed the inherent toxicity test being used as part of the Bevill low hazard criterion for today's proposed rule.

Evaluation of candidate Bevill mineral processing waste streams with respect to both hazard criterion tests is a two step process:

(1) Determine if the waste stream fails the hazard criterion at each facility for which data are available; and

(2) Determine if the waste stream fails the hazard criterion for the commodity sector.

For step 1, different procedures are required depending on the number of samples taken from a facility, as follows:

- If only one sample was or is taken at a facility, then analysis of that sample determines whether the waste stream fails or passes at that facility;
- If two samples were or are taken at a facility, then the lower value is analyzed in the pH test,[9] and the mean of the two samples is used for the toxicity and mobility test; and
- If more than two samples were or are taken from a facility, then the median value is used for the pH test, while the mean value is used to assess toxicity and mobility.[10]

In step 2, a waste stream will fail the proposed hazard criterion for the commodity sector if it fails either of the hazard tests at two or more facilities, regardless of the number of facilities generating the candidate Bevill waste. For each high volume mineral processing waste generated by two or more facilities that previously have not been sampled adequately to apply the hazard criterion, EPA plans to sample two facilities selected at random. In those instances in which a waste is generated at only one operating facility, then that facility will be sampled and the waste stream will be removed from the Bevill exclusion if it fails the hazard criterion. EPA recognizes that this method is not rigorously valid in a statistical sense, but believes that it is a reasonable way to make decisions based upon extremely limited data.

Under today's proposed rule, a waste stream would be removed from the Bevill exclusion if it failed either of the proposed hazard criterion tests. The procedure for evaluating a waste stream for purposes of developing today's NPRM was based in part on the availability of data. In cases where EP extract data were available for a mineral processing waste and these data indicated that the waste does not exhibit the hazardous characteristic of EP-toxicity, EPA has assumed that the waste would pass the toxicity portion of the proposed low hazard criterion (which uses Method l312) and is today proposing that it be retained within the Bevill exclusion. In cases where no data were available or the data indicated that a waste stream failed the EP toxicity test, but no water extraction data were available, further sampling is required and EPA is proposing to conditionally retain the waste within the Bevill exclusion if it is high volume.

EPA recognizes that the concept of explicitly addressing hazard in making

[8] "Performance Testing of Method 1312—QA Support for RCRA Testing." T.C. Chiang, C.A. Valkenburg, and P.A. Miller, Lockheed Engineering and Science Co., and S. Wayne Sovocool, EMSL—LV, March 21, 1989.

[9] The lower pH value is used because pH is measured on a logarithmic scale and the average of the anti-logs of multiple values will be dominated by the lowest value.

[10] The median value is used for pH because pH is measured on a logarithmic scale and an average pH is a meaningless number. Mean values of constituent concentrations are used due to the limited data available.

waste-specific Bevill exclusion decisions is a departure from previous Agency rulemaking proposals related to the proper scope of the Bevill exclusion. Accordingly, EPA solicits public comment on a number of issues pertaining to the new hazard criterion:

(1) The appropriateness of using pH and mobility and toxicity tests to evaluate waste-specific hazard;

(2) The appropriateness of EPA's decision not to employ a consideration of ignitability and reactivity in the hazard criterion.

(3) Whether additional constituents or measurements, particularly residual radioactivity, should be incorporated into the inherent toxicity test, and what measure is appropriate;

(4) The appropriateness of using Method 1312 and the EP-toxicity characteristic regulatory levels contained in 40 CFR 261.24(b);

(5) The appropriateness of using neutral water extracts as surrogates for data obtained using Method 1312;

(6) The appropriateness of the assumption that leachate concentrations obtained using Method 1312 will not be greater than those obtained by Method 1310;

(7) Whether EPA should incorporate selected indices of environmental hazard (e.g., Ambient Water Quality Criteria) for contaminants that are more toxic to non-human organisms than to humans (e.g., copper, zinc); and

(8) The appropriateness of the two-facility test to determine whether a candidate waste fails the hazard criterion.

B. Revision of the High Volume Criterion

In the October 20, 1988 NPRM, a waste stream was classified as a high volume waste and proposed for continued temporary exclusion from Subtitle C regulation if one of the following two conditions were fulfilled:

(1) The annual total quantity of the specific waste generated by all of the facilities in the United States in any one calendar year equals more than 2 million metric tons; or

(2) The specific waste stream is generated at an average rate of more than 50,000 metric tons per facility per year.

As discussed above, for today's proposal EPA has used only the average facility generation rate to determine whether a candidate mineral processing waste is a high volume, special waste. That is, for any waste stream arising from mineral processing in any given mineral commodity sector, the high volume criterion is satisfied if the average annual per-facility generation rate for all facilities generating that waste exceeds 50,000 metric tons. Based on currently available information, the Agency's proposal to use only the average annual facility generation rate to identify high volume mineral processing wastes affects the status of only one mineral processing waste: air pollution control dust from lime kilns. Industry comments indicate that the lime industry does not object to this proposed change in the status of this waste with respect to the Bevill exclusion.

Because EPA wishes to obtain the most recent available data, the Agency will now entertain data pertaining to waste generation during the period from 1983 through 1988, inclusive, rather than the period from 1982 through 1987, as indicated in the October 20, 1988, NPRM. Wastes that exceed the volume threshold for any single year during this five year period satisfy the high volume criterion. According to the information available to EPA, changing the dates of eligibility in this way will not remove any wastes from Bevill that would otherwise qualify as high volume wastes.

C. Clarificatfon of the Definition of Mineral Processing

EPA is continuing to use the definition of mineral processing that it articulated in the October 20, 1988, NPRM, but offers the following clarifications.

- Pollution control residuals may be considered solid wastes from the processing of ores and minerals. The residuals, however, must independently meet the high volume and low hazard criteria to qualify for continued exclusion under the Bevill Amendment. Wastewater can qualify as a mineral processing waste if the influent is derived wholly from mineral processing operations and also meets the high volume and low hazard criteria.
- Heap, dump, and in-situ leaching, as well as tank and vat leaching, are specifically defined as beneficiation operations. EPA currently considers active leach piles to be raw materials used in the production process, and leach solutions to be intermediate products. As long as the leaching operations are active, only leach solutions that escape from the production process are considered wastes.
- Processes that use heat to change the chemical composition of ores and minerals (or beneficiated ores or minerals) are, in general, considered mineral processing operations. These processes include activities such as roasting, smelting, calcining, and other pyrometallurgical techniques, which may not act to concentrate the ore or mineral value, but do enhance its characteristics. Operations that use heat only for purposes of drying, such as heating of diatomaceous earth to drive off waters of hydration, do not change the chemical composition of the materials involved in the process and hence, are considered beneficiation rather than processing operations.
- The 50 percent rule applies to all materials entering a process operation that contain the mineral value rather than all materials entering the operation irrespective of function. The requirement that at least 50 percent of the feedstock be ores or minerals (or beneficiated ores and minerals) allows mineral processing operations to use recycled materials, while ensuring that secondary processing wastes do not receive an unintended regulatory exclusion. Materials not containing the mineral value (e.g., reducing or fluxing agents) are not included when determining whether a waste complies with the 50 percent rule.
- Activities, such as manufacturing and alloying, that use concentrated ores or minerals (or beneficiated ores or minerals) without further removing or enhancing the desired mineral product(s) do not fall within the scope of mineral processing operations. Similarly, operations that involve mixing products of mineral processing with other non-mineral materials (e.g., ammonia, refined metals) are also not considered mineral processing.

D. Resulting Revisions to the Proposed Regulation

This section describes the waste-specific implications of applying the revised special mineral processing wastes criteria included in today's proposal, given the Agency's current state of knowledge. For some candidate wastes, EPA believes that it has sufficient data to make a decision to either propose to retain or propose to withdraw the waste from the Bevill exclusion. These decisions, and the data and analysis that support them, are discussed below.

Today's proposed rule also contains an explicit definition of ore and mineral beneficiation, so as to eliminate confusion and provide clear guidance as to whether a particular material is a beneficiation or a processing waste.

For a number of candidate wastes, particularly those nominated in public comment on the October 20, 1988 NPRM, however, the Agency is presently unable to apply the hazard criterion, and hence, cannot propose to either retain or withdraw the wastes. In these instances, EPA is proposing to conditionally retain the wastes within the exclusion until January 15, 1990, at which time EPA plans to make a final decision as to their Bevill status. If EPA obtains information that enables it to make a determination of hazard on a sufficiently timely basis, then the Agency will formally propose to either retain or withdraw any such waste(s) by September 15, 1989. The wastes that EPA believes meet the processing definition and high volume criterion constraints, but for which the data necessary to apply the hazard criterion are not currently available, are listed below.

Finally, as discussed above, the Agency received nominations for a large number of additional wastes, that, after review of the available information, the Agency believes do not qualify for

temporary exclusion under Bevill. These wastes are, in EPA's judgment, outside the scope of the Bevill mineral processing wastes exclusion, for a number of reasons. Some are clearly beneficiation wastes; others are wastes that are generated downstream of mineral processing, or in some instances, have a very tenuous link with mineral processing of any kind. Still others are wastes from mineral processing, but are generated in quantities too small to be considered "special wastes." Finally, some waste nominations were accompanied by statements or data that were too vague and incomplete to fully evaluate. In the absence of complete and compelling evidence to the contrary, EPA is proposing that these materials are outside the scope of the Bevill exclusion.

1. Wastes for Which Current Data Support a Proposed Exclusion Decision

a. Wastes Meeting the Processing and High Volume Criteria for Which Hazard Data are Available. Because of the addition of the hazard criterion and data limitations, the group of wastes proposed for exclusion today is different than the group of fifteen proposed in October, 1988. After consideration of the available information, the Agency has decided that it has sufficient data to determine the exclusionary status of nine mineral processing waste streams, some of which were previously proposed to be retained within the exclusion and some of which were nominated in public comment. Of those waste streams, six meet both the high volume and low hazard criteria and thus are proposed for continued exclusion, while three waste streams fail the low hazard criterion and thus would be removed from the Bevill exclusion and regulated under Subtitle C if they exhibit one or more hazardous characteristics. The data supporting these proposed exclusion decisions (i.e., against which the special wastes criteria were applied) are presented in Appendix I to this preamble.

Wastes Proposed for Retention Within the Bevill Exclusion

1. Slag from primary copper processing;
2. Slag from primary lead processing;
3. Red and brown muds from bauxite processing;
4. Phosphogypsum from phosphoric acid production;
5. Slag from elemental phosphorus production; and
6. Furnace scrubber blowdown from elemental phosphorus production.

Wastes Proposed for Withdrawal from the Bevill Exclusion

1. Acid plant and scrubber blowdown from primary copper processing;
2. Acid plant blowdown from primary lead processing; and
3. Air pollution control scrubber blowdown from primary tin processing.

b. Materials not Meeting the Processing Waste Definition and Wastes Which Fail the Volume Criterion. In response to the proposed rule, commenters nominated many additional waste streams that they believed should be retained within the temporary exclusion. EPA has reviewed these nominations, and in most instances, has concluded that these additional wastes should not be afforded special waste status, and hence, is today proposing to remove them from the temporary exclusion (a few, however, fall within the exclusion as extraction and beneficiation wastes). The reasons for these waste-specific decisions are varied; some wastes did not meet the definition of mineral processing wastes (e.g., are beneficiation or alloying wastes), while others are generated by processes that are outside the scope of this rulemaking (e.g., secondary metal production). The most common reason, however, for rejecting claims of Bevill status was that the nominated materials are not high volume wastes. These wastes and the reason(s) that EPA is proposing to withdraw them from the Bevill exclusion, are presented in Table 1.

2. Wastes Meeting the Processing Waste and High Volume Criteria for Which Sufficient Hazard Data are Unavailable

Of the many wastes nominated for exclusion by commenters, 33 wastes appear to meet the processing waste definition and the revised high volume criterion. Because the Agency does not have sufficient data at this time to determine whether these wastes meet the low hazard criterion, EPA is today proposing to conditionally retain these waste streams within the Bevill exclusion until EPA can collect and analyze the necessary data. These materials are listed in Table 2, below. The regulatory status of these wastes will be addressed in a subsequent proposed rulemaking (on or before September 15, 1989).

To obtain sufficient data to allow the Agency to determine whether these 33 wastes are low hazard, the Agency is planning to conduct a waste sampling and analysis effort. The Agency also plans to send letters to all facilities that it believes generate one or more of these wastes requesting information of waste characteristics under the authority of Section 3007 of RCRA. Further, the Agency solicits comments and data that could be used in helping to determine the level of potential hazard that these wastes pose to human health and the environment.

3. Wastes for Which Commenters Provided No Volume or Hazard Data

Commenters on the October 1988 proposed rule nominated several wastes for continued exclusion without providing supporting data. Commenters on one waste in particular, chrome ore roast/leach residue, implied that this waste would meet the Agency's criteria for Bevill exclusion, yet provided no data. In the absence of additional information submitted during the public comment for today's rulemaking that demonstrates that chrome ore roast/leach residue is indeed a high volume waste, EPA plans to remove it from the Bevill exclusion when this proposal is finalized by August 18, 1989.

Another candidate Bevill waste identified in the October 20, 1988 NPRM was iron blast furnace APC dust/sludge. EPA believes that the wastes generated from wet and dry air pollution control techniques at blast furnaces (and other operations) should be considered separately. Currently available data do not, however, allow the Agency to consider these waste streams individually. Accordingly, EPA solicits public comment and data regarding APC dust and sludge generation. In the absence of adequate data, EPA may conclude that neither type of waste independently meets the special waste criteria and, accordingly, propose to remove both from the Bevill exclusion.

Similarly, any other mineral processing wastes for which the Agency does not have information that demonstrates it is a high volume waste will be permanently removed from the exclusion when today's rulemaking is finalized. Therefore, any commenters on today's proposal who suggest additional wastes that should be retained within the exclusion must provide volume data for the waste, as well as any available information on pH (if the waste is a liquid) and toxicity and mobility testing results.

TABLE 1.—EXAMPLES OF WASTES PROPOSED FOR WITHDRAWAL FROM THE BEVILL EXCLUSION ON THE BASIS OF POINT OF GENERATION OR VOLUME, AND WASTES FROM BENEFICIATION THAT ARE UNAFFECTED BY THIS RULE

Sector	Waste stream	Basis for proposed withddrawal *	Information source **	Annual average generation (mt/yr)
Aluminum	Anode prep dust	Low volume	MWEP S0005	2,852
Aluminum	Baghouse bags/plant filters	Low volume	MWEP S0005	9,500
Aluminum	Casthouse dust	Low volume	MWEP S0005	831
Aluminum	Cryolite recovery residue	Low volume	MWEP S0005	30,000
Aluminum	Dross	Low volume	MWEP S0005	5,749
Aluminum	Dust	Low volume	MWEP S0005	1,692
Aluminum	Electrolysis waste	Low volume	MWEP S0005	6,568
Aluminum	Plant trash	Low volume	MWEP S0005	2,400
Aluminum	Scrap furnace brick	Low volume	MWEP S0005	3,830
Aluminum	Skims	Low volume	MWEP S0005	879
Aluminum	Sludge and dredged solids	Low volume	MWEP S0005	5,150
Aluminum	Sweepings	Low volume	MWEP S0005	1,100
Bauxite	Cooling tower blowdown	Low volume	MWEP S0005	2,100
Bauxite	Miscellaneous solid waste	Low volume	MWEP S0005	4,350
Bauxite	Salts	Low volume	MWEP S0005	2,200
Bauxite	Spent cleaning acid	Low volume	MWEP S0005	668
Bauxite	Waste alumina	Low volume	MWEP S0005	6,800
Bauxite	Water softener sludge	Low volume	MWEP S0005	950
Beryllium	Beryl Plant Discard	Low volume	MWEP00041	[1] 37,000
Beryllium	Sludge Leaching Slurry	Low volume	MWEP00041	[1] 47,000
Chromite	Chrome Contaminated Waste	Not Processing—Not Uniquely Associated.	MWEP00058, MWEP00032, 32A.	
Copper	Contact cooling water	Low volume	MWEP S0005	1,807
Copper	Crud	Low volume	MWEP S0005	127
Copper	Furnace Brick	Low volume	MWEP S0005	1,883
Copper	Slimes	Low volume	MWEP S0005	508
Copper	Tankhouse Slimes	Low volume	MWEP S0005	433
Copper	Sodium Hydroxide WWI plant sludge	Low volume	MWEP00030	5,616
Copper	Roast Leach Acid Plant Residue	Not Processing—Prospective Waste.	MWEP00054	
Ferromolybdenum	Slag	Low volume	MWEP S0005, MWEP00007	[1] 682
General	Mill Tailings and Wastewaters	Not Processing—Beneficiation	MWEP00001	
Gold	Spent Ore from Leaching	Not Processing—Benefication	MWEP00064	
Iron	APC dust from Sintering	Not Processing—Beneficiation	MWEP00066, 00028	
Iron	Coke Making Wastes	Not Processing	MWEP00066	
Lanthanides	Beneficiation Wastewater	Not Processing—Beneficiation	MWEPL0005, MWEP00007	
Lanthanides	Residues	Not Processing—Beneficiation	MWEPL0005, MWEP00007	
Lanthanides	Slag	Low volume	MWEPL0005	[1] 136
Lanthanides	Tailings	Not Processing—Beneficiation	MWEPL0005, MWEP00007	
Lead	Slag fines	Low volume	MWEP S0005	10,400
Lead	Slurried APC dust	Low volume	MWEP S0005	7,100
Lead	Solids in plant washdown	Low volume	MWEP S0005	100
Lead	Spent furnace brick	Low volume	MWEP S0005	106
Lightweight Aggregate	Kiln APC Dust	Low volume	MWEPL0006	4,137
Lightweight Aggregate	Raw Fines	Not Processing—Beneficiation	MWEPL0006	
Lime	Kiln APC dust	Low volume	(Proposed Rule; 10/20/88)	[2] 28,205
Magnesium	Slag	Low volume	MWEPL0004	18,577
Molybdenum	Roaster gas scrubber water	Low volume	MWEPL0005	[1] 1,090
Molybdenum	Tailing and solution	Not Processing—Beneficiation	MWEPL0005, MWEP00007	
Phosphoric acid (wet)	Runoff from inactive stacks	Not Processing—Not Uniquely Associated.	MWEP00034/MWEP00033	
Secondary Copper	Bleed Electrolyte	Not Processing—Secondary Operation.	MWEP00061	
Secondary Copper	Process Wastewater	Not Processing—Secondary Operation.	MWEP00061	
Shale Oil	Retorting Wastes	Not Processing—Beneficiation	MWEPL0005, MWEP00007	
Steel	Steel (BOF) APC dust/sludge	Low volume	MWEP00028	30,000
Tantalum/Niobium	Processing wastes	Low volume	MWEP00015	[1] 1,500
Tin	Slag	Low volume	MWEP00043	15,000
Tungsten	Ore leach sludge	Low volume	MWEPL0002	[3] 3,920
Tungsten	Waste treatment sludge	Low volume	MWEPL0002	[3] 1,176
Uranium	Tailing and solution	Not Processing—Beneficiation	MWEPL0005, MWEP00007	
Zinc	Filter cloths, baghouse bags, filters	Low volume	MWEP S0005	39

TABLE 1.—EXAMPLES OF WASTES PROPOSED FOR WITHDRAWAL FROM THE BEVILL EXCLUSION ON THE BASIS OF POINT OF GENERATION OR VOLUME, AND WASTES FROM BENEFICIATION THAT ARE UNAFFECTED BY THIS RULE—Continued

Sector	Waste stream	Basis for proposed withddrawal *	Information source **	Annual average generation (mt/yr)
Zinc	Goethite	Low volume	MWEP00035	22,000
Zinc	Metal residues (saleable)	Low volume	MWEP S0005	8,571
Zinc	Refractory brick	Low volume	MWEP S0005	510
Zinc	Synthetic gypsum	Low volume	MWEP S0005	16,600
Zinc	ICA tower blowdown	Low volume	MWEP S0005	540
Zinc	Zinc-lean slag	Low volume	MWEP00035, 00055	[1] 36,300

* Wastes designated as "Not Processing—Benefication" will remain excluded, pursuant to EPA's Regulatory Determination (51 FR 24496).
** Refers to comment/document number in RCRA docket, except as noted.
[1] Average is for the commenting company; all other averages are industry averages.
[2] Values are from the Proposed Rule, Oct. 20, 1988.
[3] Calculated using data from comments supplemented with data from BOM sources.

TABLE 2—PROSPECTIVE BEVILL MINERAL PROCESSING WASTES FOR WHICH EPA HAS INSUFFICIENT DATA TO EVALUATE HAZARD

Sector	Waste stream	Industry average generation (mt/yr)	Information source*
Beryllium	Barren filtrate	[1] 80,000	MWEP00041.
Beryllium	Processing raffinate	[1] 530,000	MWEP00041.
Beryllium	Bertrandite thickener slurry	[1] 660,000	MWEP00041.
Cerium	Process water	[1] 75,000	MWEPL0005.
Coal gasification	Gasifier ash	250,000	MWE030.
Coal gasification	Cooling tower blowdown	697,000	MWEP L0016.
Coal gasification	Wastewater	4,980,000	MWEP L0016.
Chromite	Roast/leach ore residue	[2] >50,000	(Proposed Rule; Oct. 20, 1988).
Copper	Bleed electrolyte	[2] 63,514	(Proposed rule; Oct. 20, 1988)
	(additional comments)	([1]) 51,455	MWEP00031A.
Cooper	Process wastewater	[2] 53,050	(Proposed rule; Oct 20, 1988).
Cooper	Slag tailings	[1] 339,500	MWEP00030.
Cooper	Calcium sulfate from WWT	75,750	MWEP00030.
Elemental phosphorus	Furnace off-gas solids	107,000	MWEP00063
	(additional comments)	107,000	MWEP00026.
Elemental phosphorus	Process wastewater	311,00	MWEP0063
	(additional comments)	([1]) 250,000	MWEP00052
	(additional comments)	311,000	MWEP0026.
Hydrofluoric acid	Fluorogypsum	267,000	MWEP00058.
Iron	APC dust/slurry from blast furnaces	[2] 133,208	(Proposed rule; Oct. 20, 1988).
Iron	Blast furnace slag	[2] 408,542	(Proposed rule; Oct. 20, 1988).
Lanthanides	Ammonium nitrate process solution	[1] 52,000	MWEPL0005.
Lead	Process wastewater	[1] 1,300,000	MWEP00036.
Lightweight aggregate	Scrubber wastewater	396,000	MWEP00063
	(additional comments)	([1]) 674,500	MWEP00029.
Lightweight aggregate	Wastewater treatment solids	63,318	MWEP00063
	(additional comments)	([1]) 67,676	MWEP00029.
Magnesium	Wastewater from the anhydrous process	2,730,000	MWEP00063
	(additional comments)	2,730,000	MWEP00018.
Molybdenum	Selenium Pl. Effluent from processing APB	54,000	MWEP00018
	(addition comments)	54,000	MWEP00063.
Phosphoric acid	Process wastewater	[3] >714,000	MWEP00033
	(additional comments)		MWEP00034
Steel	Steel (BOF) slag	200,000	MWEP00028.
Soda ash	Wastes from trona ore processing	[1] 100,000	MWEP00064
	(addition comments)	[3] 2,960,000	MWEP0013
	(additional comments)	[1] 3,600,000	MWEP00013.
Titanium	Leach liquor	[1] 78,000	MWEPL0001.
Titanium	Sulfate processing waste acids	[1] 1,498,400	MWEPL003.
Titanium	Sulfate processing waste solids	[1] 86,800	MWEPL0003.
Titanium	Chloride processing waste acids	[13] 52,933	MWEPL0003.
Titanium	Chloride processing waste solids	[13] 67,066	MWEPL003.
Zinc	Acid plant blowdown	[2] 76,450	(Proposed rule; Oct 20, 1988).
Zinc	Process wastewater	[2] 725,500	(Proposed rule; Oct 20, 1988).

*—Refers to comment number in RCRA docket, except as noted.
[1]—Average is for the commenting company; all other averages are industry averages.
[2]—Values are from the Proposed Rule, Oct. 20, 1988.
[3]—Calculated using date from comments supplemented with data from BOM sources.

V. Regulatory Impacts of This Proposal

When this rule is promulgated in final form, mineral processing wastes that have been temporarily excluded from regulation under Subtitle C of RCRA since 1980, except the 39 "special wastes" described above, may now be subject to Subtitle C requirements beginning, at the latest, on or about February 23, 1990 (i.e., six months after publication of the final rule) (approximately August 23, 1989) in those States that do not have authorization to administer their own hazardous waste program in lieu of EPA (facilities in authorized States will be subject to RCRA requirements only after the State revises its program to adopt equivalent requirements and EPA authorizes the revision). These requirements include determining whether the solid waste(s) exhibit hazardous characteristics (40 CFR 262.11) and, if so, obtaining an EPA identification number (40 CFR 262.34), complying with recordkeeping and reporting requirements (40 CFR 262.40–262.43), and submitting an application for a treatment, storage, or disposal permit (RCRA Sec. 3005 "Part A" permit) for interim status if the waste is managed on-site.

In order to qualify for interim status, owners and operators of existing facilities would have to notify EPA of their hazardous waste management activities by November 23, 1989 (i.e., 90 days after publication of the final rule) and submit a Part A permit application by February 23, 1990 (i.e., 6 months after the publication date of the final rule). Facilities that do not obtain interim status would be required to cease all hazardous waste treatment, storage, and disposal activities requiring a permit and transport all of their hazardous wastes to a permitted facility.

All interim status hazardous waste treatment, storage, and disposal (TSD) facilities (including those that may fail to qualify for interim status) would have to comply with the interim status standards set forth at 40 CFR Part 265. Subsequently, qualifying interim status facilities would have to submit a Part B application for a final RCRA permit if a date for doing so is established by the Regional Administrator. In any event, however, a Part B permit application and a certification of groundwater monitoring and finanical responsibility requirements must be filed by land disposal facilities within 18 months of publication of the final rule for such facilities to retain interim status (40 CFR 270.73(d)). Completion of final permit applications would require individual facilities to develop and compile information on their on-site waste management operations including, but not limited to the following activities: Ground-water monitoring (if waste management on land is involved); manifest systems, recordkeeping, and reporting; closure, and possibly, post-closure requirements; and financial responsibility requirements. The permit applications may also require development of engineering plans to upgrade existing facilities. In addition, many of these facilities will, in the future, be subject to land disposal restriction (LDR) standards. EPA plans to promulgate LDR standards for all characteristic hazardous wastes by May 8, 1990. Under EPA regulations, these standards must require treatment of the affected wastes to a level or by a method that reflects the use of Best Demonstrated Available Technology (BDAT) before the wastes can be disposed on the land. Thus, one future implication of today's proposal (when finalized) will be the ban on land disposal of these wastes unless they are appropriately treated prior to such disposal. Also, facililties with existing permits and permit applications that are currently treating, storing, or disposing of wastes that will be subject to Subtitle C regulation when this rule is promulgated, will have to amend or modify their permits or applications to include provisions applicable to managing these newly non-excluded wastes.

VI. Public Participation

Requests to speak at the public hearing should be submitted in writing to the Public Hearings Officer, Office of Solid Waste (WH–562), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. The public hearing will be at the Washington Plaza Hotel, 10 Thomas Circle, NW., Washington, DC. The hearing will begin at 9:00 a.m., with registration beginning at 8:30 a.m. The hearing will end at 5:00 p.m. unless concluded earlier. Oral and written staements may be submitted at the public hearing. Persons who wish to make oral presentations must restrict these to 15 minutes, and are requested to provide written comments for inclusion in the official record.

VII. Effect on State Authorizations

This proposal, if promulgated, will not be automatically effective in authorized States, since the requirements will not be imposed pursuant to the Hazardous and Solid Waste Amendments of 1984. Thus, this reinterpretation will be immediately applicable only in those few States that do *not* have final authorization to operate their own hazardous waste programs in lieu of the Federal program. In authorized States, the reinterpretation and the regulation of non-excluded processing wastes will not be applicable until the State revises its program to adopt equivalent requirements under State law.

States that have final authorization are required (40 CFR 271.21(e)) to revise their programs to adopt equivalent standards by July 1, 1990 if only regulatory changes are necessary, or by July 1, 1991 if statutory changes are necessary. These deadlines can be extended by up to six months (i.e., until January 1, 1991 and January 1, 1992, respectively) in exceptional cases (40 CFR 271.21(e)(3)). Once EPA approves the revision, the State requirements become RCRA Subtitle C RCRA requirements in that State. States are not authorized to carry out any regulations providing coverage similar to today's proposed rule as RCRA requirements until such regulations (or modifications to regulations) are submitted to EPA and approved. Of course, states with existing standards may continue to administer and enforce them as a matter of state law.

States that submit an official application for final authorization less than 12 months after the effective date of the reinterpretation may be approved without including an equivalent provision (i.e., to address "special" mineral processing wastes) in the application. However, once authorized, a State must revise its program to include an equivalent provision according to the requirements and deadlines provided at 40 CFR 271.21(e).

VIII. Compliance With Executive Order 12291

Sections 2 and 3 of Executive Order 12291 (46 FR 13193) require that a regulatory agency determine whether a new regulation will be "major" and, if so, that a Regulatory Impact Analysis be conducted. A major rule is defined as a regulation which is likely to result in:

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

(2) A major increase in costs or prices for consumers, individuals, industries,

Federal, State, and local government agencies, or geographic regions; or

(3) 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.

Section 8 of Executive Order 12291 exempts an agency from the requirements of the order when compliance would conflict with deadlines imposed by statute or judicial order. Accumulating the information and conducting the analyses required to fully comply with the requirements of section 2 and 3 takes many months. Therefore, compliance with these requirements is not possible within the schedule specified by the Court for this rulemaking.

Today's proposed rule would remove the Bevill exclusion from all smaller volume (less than 50,000 metric ton per year) waste streams at ore and mineral processing facilities, and it would also remove the exclusion from the three high volume wastes thus far determined by the Agency to not be low hazard wastes. Therefore, the impacts of today's proposal would fall within the three metal commodity sectors producing the three high volume wastes and any other metal or non-metal ore processing sectors producing smaller volume waste streams that fail the standard EPA characteristic tests for hazardous wastes under Subtitle C of RCRA.

The Agency does not have comprehensive waste quantity or waste characteristics data with which to characterize most of the individual waste streams or sectors potentially affected by today's rule. However, past sampling of facilities in many metal product sectors indicates that some smaller volume waste streams from these sectors contain toxic constituents such as arsenic, lead, cadmium, and other heavy metals at concentrations that would cause them to be considered hazardous wastes under the characteristics testing definition (see reference to Appendix I). There is considerable variability in these data, however, such that certain waste types that test hazardous at one site would not be found hazardous at another. Furthermore, some metallic ore commodity sectors apparently do not currently produce any wastes that would be RCRA hazardous wastes, either because of the nature of the raw materials or processes involved, or because of the waste management practices (e.g., recycling) employed. Thus, EPA expects that any future Subtitle C compliance costs would be quite site- and sector-specific.

Although the Agency cannot conduct a complete economic impact analysis within the period of time allowed by the Court, the Agency's economic impact analyses conducted in support of previous Agency rulemaking and Report to Congress activities suggest that today's proposal may well not meet the criteria for a "major" rule.

As noted in the preamble to the Agency's October 20, 1988, proposed rulemaking on this same topic (53 FR 41297–99), annual costs of Subtitle C compliance for the major metals industries were previously estimated in the $10 to $20 million range. These costs did not include estimates for land disposal restrictions or corrective action requirements, nor did they address many smaller metallic ore sectors. They did, however, include several of the large volume wastes added to the tentative list of special wastes discussed in today's proposed rule; and they did conservatively include many waste streams as hazardous by analogy without specific test data confirmation.

Review of public comments on the cost estimates for the metals sectors presented in the October proposal did not reveal substantial new information regarding small volume metallic ore sector waste streams or the likelihood of their being hazardous under Subtitle C characteristics tests. The Agency also specifically sought comment and data for non-metallic ore and mineral processing sectors, but received no data indicating that these sectors contain small volume waste streams with hazardous characteristics that would be affected by either last October's or today's proposed rules. In the absence of such data, the Agency cannot conduct further substantive evaluations of compliance costs or impacts.

The Agency recognizes that its knowledge of the wastes generated by many metallic and non-metallic ore processing sectors is incomplete. To the extent that these sectors generate low volume wastes that would fail hazardous waste characteristics tests, and hence be subject to Subtitle C requirements after the effective date of this rule, EPA may, therefore, have underestimated impacts in its previous analyses. The Agency does not, however, have information at hand to suggest that there are large numbers of such wastes or that their management would impose substantial costs or impacts. The Agency again requests comment and data pertinent to small volume wastes that may be hazardous under Subtitle C.

Although the Agency does not intend to conduct a Regulatory Impact Assessment (RIA) relating to this rule, an additional economic impact review may be warranted at the time of promulgation. The extent and nature of such a review will depend on specific industry data received in public comments regarding small volume wastes generated by metallic and non-metallic mineral commodity sectors, and on the final array of high volume wastes removed from the Bevill exclusion due to application of the low hazard criterion.

Since the Agency has not in the past determined this to be a major rule, it has not previously conducted a benefits analysis under E.O. 12291. In general, the Agency's waste testing results for metallic ore processing wastes affected by this rule have indicated that some smaller volume wastes would test hazardous under EPA's current characteristics tests. Such wastes would thus pose risks to human health or the environment under plausible mismanagement scenarios typical of those which the Subtitle C regulations are designed to protect against. Therefore, management of such wastes under Subtitle C would yield benefits in terms of human health and environmental protection to the extent that they are currently mismanaged.

This proposal was submitted to the Office of Management and Budget (OMB) for review as required by section 6 of Executive Order 12291. Any comments from OMB to EPA and any response to those comments are available for viewing at the RCRA Docket.

IX. Regulatory Flexibility Analysis

The Regulatory Flexibility Act (RFA) of 1980 (Pub. L. 96–354), which amends the Aministrative Procedures Act, requires Federal regulatory agencies to consider "small entities" throughout the regulatory process. The RFA requires, in section 603, an initial screening analysis to be performed to determine whether a substantial number of small entities will be significantly affected by a regulation. If so, regulatory alternatives that eliminate or mitigate the impacts must be considered.

Section 608 of the Act allows an Agency head to waive or delay completion of the screening analysis in response to an emergency that makes compliance with the requirements of Section 603 on a timely basis impracticable. In this instance, the court-imposed deadline for publication of this proposed rule prevents EPA from conducting a complete analysis of

potential impacts of the rule on small entities in time to support this proposed rule, especially given the large number of industry sectors that nominated new waste streams that appear to meet the volume criterion. The Agency did, however, conduct a detailed screening analysis for all nonferrous smelting and refining and ferroalloy-producing facilities as part of the 1985 proposal to reinterpret the mining waste exclusion. Based on that analysis, the Agency determined that small business ownership (as defined by the Small Business Administration) was rare in metals processing, and further, that in those few sectors (ferroalloys, gold and silver refining) in which facilities were not all owned by large businesses or conglomerates, the small enterprises were generally of a type that would be either unaffected or not significantly affected by the proposed reinterpretation (50 FR 40300).

EPA has not studied enterprise ownership patterns or the potential cost impacts of today's rule for the non-metallic ore and mineral processing sectors. Nevertheless, based on general knowledge of the raw material processing industries and information submitted in public comment on the October 20, 1988 NPRM and on the 1985 proposed reinterpretation, the Agency believes that the general conclusions reached for the metals sectors should apply also to the non-metals sectors and that today's proposed rule would not impose adverse impacts on a substantial number of small business enterprises sufficient to warrant additional application of the Regulatory Flexibility Act. The Agency will, however, present limited additional analysis regarding ownership patterns in and potential effects of the proposed rule on the mineral processing industry when the Bevill special mineral processing waste criteria are finalized (by August 18, 1989).

The Agency solicits comment and further specific information relating to small businesses that may produce ore or mineral processing wastes that would, by virtue of the hazardous characteristics of such wastes, be subject to adverse impacts by today's proposed rule.

List of Subjects in 40 CFR Part 261

Hazardous waste, Waste treatment and disposal, Recycling, Reporting and recordkeeping requirements.

Dated: April 7, 1989.

William K. Reilly,

Administrator.

Appendix I

EXHIBIT 1.—RED AND BROWN MUDS FROM BAUXITE PROCESSING

Plant	Source (1)	Page No.	Sample I.D. (2)	Waste type (3)	EP/H20 (4)		Constituents, concentrations, regulatory levels and rations(5)								
							Percent solids	pH <1, >13.5	As 5	Ba 100	Cd 1	Cr 5	Pb 5	Hg 0.2	Se 1	Ag 5
A	Radian ..	B-2	ND	Bauxite Residue.	H20		ND	NA	0.11	0.011	<0.002	0.22	0.002	<0.0002	0.052	<0.002
						Avg./Reg. Level.	.....	.....	0.02	0.0001	<0.002	0.04	<0.0004	<0.001	0.05	<0.0004
B	Radian ..	B-1	ND	Bauxite Residue.	H20		ND	NA	1.4	0.009	<0.002	0.81	0.002	<0.0002	<0.002	<0.002
						Avg./Reg. Level.	.....	.....	0.3	0.0001	<0.002	0.2	0.0004	<0.001	<0.002	<0.0004

Overview of Solid Waste Generation, Management and Chemical Characteristics in the Bauxite Refining and Primary Aluminum Reduction Industries, Radian Corporation, McLean, Virginia, November, 1985.

Sample number provided in the source document.

Description of waste type provided in the source document.

Indicates whether the data provided are for analysis of the sample according to EP toxicity test procedures (40 CFR 261.24) or an analogous procedure in which deionized water was used as the extraction medium rather than acetic acid. For samples that contain less than 0.5% solids, the methods are equivalent because no extraction of the sample was performed.

(5) Regulatory levels (in mg/l) shown are those for the hazard criterion presented in this proposal. Highlighted ratios indicate exceedances of the hazard criterion. The regulatory levels (except pH) are taken from 40 CFR 261.24(b) and are 100x the MCLs. Constituent concentrations are in units of mg/l. "<" indicates that the concentration was below the detection limit; in these instances, the detection limit was used to compute the average concentration.

NA=Not applicable.

ND=No data available.

EXHIBIT 2.—ACID PLANT AND SCRUBBER BLOWDOWN FROM PRIMARY COPPER PROCESSING

Plant	Source (1)	Page No.	Sample I.D. (2)	Waste Type (3)	EP/H2O (4)		Constituents, concentrations, regulatory levels and ratios (5)									
							Percent solids	pH <1,>13.5	As 5	Ba 100	Cd 1	Cr 5	Pb 5	Hg 0.2	Se 1	Ag 5
A	PEDCo..	5-19	DQ828	Acid plant blowdown.	H2O		ND	ND	15.3	2.2	0.032	0.003	0.005	0.12	0.13	<0.03
A	PEDCo..	5-19	DQ829	Acid plant blowdown.	H2O		ND	ND	16	2.7	0.023	<0.002	0.006	0.09	0.13	<0.03
						Avg.			15.7	2.5	0.03	0.003	0.006	0.1	0.1	<0.03
						Avg./Reg. level.			3.1	0.02	0.03	0.001	0.001	0.5	0.1	<0.006
B	PEDCo..	5-10	DQ839	Acid plant blowdown.	EP		<0.01	2.71	21.6	0.3	0.31	0.029	2.55	<0.0006	0.028	<0.04
B	PEDCo..	5-10	DQ841	Acid plant blowdown.	EP		<0.01	ND	14.1	<0.4	0.16	0.024	1.74	<0.0006	0.068	<0.03
						Avg.		2.71	17.9	0.4	0.2	0.03	2.1	<0.0006	0.05	<0.035
						Avg./Reg. level.			3.6	0.004	0.2	0.005	0.4	<0.003	0.05	<0.007
C	PEDCo..	5-10	DR714	Acid plant blowdown.	EP		0.01	2.38	0.19	0.8	1.46	0.005	2.49	0.0013	0.16	<0.03
C	PEDCo..	5-10	DR715	Acid plant blowdown.	EP		0.01	2.4	0.18	<0.8	1.49	0.005	2.89	0.0013	0.16	<0.03
						Avg.		2.38	0.185	0.8	1.475	0.005	2.7	0.0013	0.16	<0.03
						Avg./Reg. level.			0.04	0.008	1.475	0.001	0.5	0.007	0.16	<0.006

(1) Overview of Solid Waste Generation, Management and Chemical Characteristics in the Primary Copper Smelting and Refining Industry, PEDCo Environmental, Inc., Cincinnati, Ohio, October, 1984.
(2) Sample number provided in the source document.
(3) Description of waste type provided in the source document.
(4) Indicates whether the data provided are for analysis of the sample according to EP toxicity test procedures (40 CFR 261.24) or an analogous procedure in which deionized water was used as the extraction medium rather than acetic acid. For samples that contain less than 0.5% solids, the methods are equivalent because no extraction of the sample was performed.
(5) Regulatory levels (in mg/l) shown are those for the hazard criterion presented in this proposal. Highlighted ratios indicate exceedances of the hazard criterion. The regulatory levels (except pH) are taken from 40 CFR 261.24(b) and are 100x the MCLs. Constituent concentrations are in units of mg/l. "<" indicates that the concentration was below the detection limit; in these instances, the detection limit was used to compute the average concentration.
NA = Not applicable.
ND = No data available.

EXHIBIT 3.—SLAG FROM PRIMARY COPPER PROCESSING

Plant	Source (1)	Page No.	Sample I.D. (2)	Waste Type (3)	EP/H_2O (4)		Constituents, Concentrations, Regulatory Levels and Ratios (5)									
							Percent Solids	pH <1,>13.5	As 5	Ba 100	Cd 1	Cr 5	Pb 5	Hg 0.2	Se 1	Ag 5
A	PEDCo..	App. B	DQ824	Reverberatory Furnace Slag.	H_2O		ND	NA	0.004	<0.8	0.011	<0.002	<0.004	0.0015	<0.004	<0.03
A	PEDCo..	App. B	DQ826	Furnace Flash Slag.	H_2O		ND	NA	0.008	<0.8	0.029	<0.002	0.018	0.001	<0.004	<0.03
A	PEDCo..	App. B	DQ825	New Converter Slag.	H_2O		ND	NA	0.01	<0.8	<0.001	<0.002	0.004	0.0015	<0.004	<0.03
						Avg.			0.007	<0.8	0.01	<0.002	0.06	0.001	<0.004	<0.03
						Avg./Reg. Level.			0.001	<0.008	0.01	<0.0004	0.01	0.007	<0.004	<0.006

EXHIBIT 3.—SLAG FROM PRIMARY COPPER PROCESSING—Continued

Plant	Source (1)	Page No.	Sample I.D. (2)	Waste Type (3)	EP/H_2O (4)		Constituents, Concentrations, Regulatory Levels and Ratios (5)								
							Percent Solids	pH <1,>13.5	As 5	Ba 100	Cd 1	Cr 5	Pb 5	Hg 0.2	Se 1	Ag 5
B	PEDCo..	App. B	DR108	Composite Slag.	H_2O		ND	NA	0.016	<0.8	<0.001	<0.002	<0.004	<0.0006	0.004	<0.03
B	PEDCo..	App. B	DQ837	Aged Slag	H_2O		ND	NA	0.008	<0.8	<0.001	<0.002	0.004	<0.0006	<0.004	<0.03
B	PEDCo..	App B	DQ838	New Slag	H_2O		ND	NA	<0.006	<0.8	0.001	<0.002	0.007	<0.0006	<0.004	<0.03
						Avg.			0.01	<0.8	0.001	<0.002	0.005	<0.0006	<0.004	<0.03
						Avg./Reg. Level.			0.002	<0.008	0.001	<0.0004	0.001	<0.003	<0.004	<0.006
C	PEDCo..	App. B	DR709	Copper Slag	H_2O		ND	NA	0.086	<0.8	0.14	<0.001	<0.008	<0.0006	<0.002	<0.03
C	PEDCo..	App. B	DR706	Blast Furnace Slag.	H_2O		ND	NA	1.18	<0.8	0.032	0.01	0.23	0.0029	0.071	<0.03
C	PEDCo..	App. B	DR707	Blast Furnace Slag.	H_2O		ND	NA	1.13	<0.8	0.005	0.002	<0.17	0.0023	0.062	<0.03
						Avg.			0.8	<0.8	0.06	0.004	0.136	0.002	0.05	<0.03
						Avg./Reg. Level.			0.2	<0.008	0.06	0.0008	0.03	0.01	0.05	<0.006
D	PEDCo..	App. B	DR711	Fresh Slag	H_2O		ND	NA	<0.004	<0.8	0.023	0.002	0.024	<0.0006	<0.002	<0.03
D	PEDCo..	App. B	DR712	Fresh Slag	H_2O		ND	NA	<0.004	<0.8	0.001	<0.001	0.006	<0.0006	<0.002	<0.03
D	PEDCo..	App. B	DR713	Old Slag	H_2O		ND	NA	<0.004	<0.8	0.004	<0.001	0.021	<0.0006	<0.002	<0.03
						Avg.			<0.004	<0.8	0.01	0.001	0.02	<0.0006	<0.002	<0.03
						Avg./Reg. Level.			<0.0008	<0.008	0.01	0.0003	0.003	<0.003	<0.002	<0.006
E	PEDCo..	App. B	DR716	Waste Slag Dump.	H_2O		ND	NA	<0.004	<0.8	3.5	<0.001	0.33	<0.0006	<0.01	<0.03
						Avg./Reg. Level.			<0.0008	<0.008	3.5	<0.0002	0.066	<0.003	0.01	<0.006
F	PEDCo..	App. B	DQ831	Fresh Slag	H_2O		ND	NA	0.048	<0.8	0.048	<0.002	0.007	0.0018	<0.004	<0.03
F	PEDCo..	App. B	DQ832	Old Slag	H_2O		ND	NA	0.041	<0.8	0.002	<0.002	<0.004	0.0009	<0.004	<0.03
						Avg.			0.045	<0.8	0.03	<0.002	0.006	0.001	<0.004	<0.03
						Avg./Reg. Level.			0.009	<0.008	0.03	<0.0004	0.001	0.007	<0.004	<0.006

(1) Overview of Solid Waste Generation, Management and Chemical Characteristics in the Primary Copper Smelting and Refining Industry, PEDCo Environmental, Inc., Cincinnati, Ohio, October, 1984.
(2) Sample number provided in the source document.
(3)Description of waste type provided in the source document.
(4) Indicates whether the data provided are for analysis of the sample according to EP toxicity test procedures (40 CFR 261.24) or an analogous procedure in which deionized water was used as the extraction medium rather than acetic acid. For samples that contain less than 0.5% solids, the methods are equivalent because no extraction of the sample was performed.
(5) Regulatory levels (in mg/l) shown are those for the hazard criterion presented in this proposal. Highlighted ratios indicate exceedances of the hazard criterion. The regulatory levels, (except pH) are taken from 40 CFR 261.24 (b) and are 100x the MCLs. Constituent concentrations are in units of mg/l. "<" indicates that the concentration was below the detection limit; in these instances, the detection limit was used to compute the average concentration.
NA=Not applicable.
ND=No data available.

EXHIBIT 4.—ACID PLANT BLOWDOWN FROM PRIMARY LEAD PROCESSING

Plant	Source (1)	Page No.	Sample I.D. (2)	Waste Type (3)	EP/H20 (4)		Constituents, Concentrations, Regulatory Levels and Ratios (5)								
							Percent solids	pH <1,>13.5	As 5	Ba 100	Cd 1	Cr 5	Pb 5	Hg 0.2	Se 1	Ag 5
A	PEI	5-15	DR083	Neut. acid plant blowdown.	EP		0.01	6.9	24.4	<0.8	2.61	<0.002	1.45	0.0038	0.089	<0.03
						Avg./Reg. Level.			4.9	<0.008	2.61	<0.0004	0.3	0.02	0.09	<0.006
D	PEI	5-15	DQ238	Neut. acid plant blowdown.	EP		0.01	11.2	0.005	0.9	0.014	0.007	22	<0.0002	0.004	<0.03
						Avg./Reg. Level.			0.001	0.009	0.014	0.001	4.4	<0.001	0.004	<0.006

(1) Overview of Solid Waste Generation, Management and Chemical Characteristics, Primary Lead Smelting and Refining Industry, PEI Associates, Inc., Cincinnati, Ohio, November, 1984.
(2) Sample number provided in the source document.
(3)Description of waste type provided in the source document.
(4) Indicates whether the data provided are for analysis of the sample according to EP toxicity test procedures (40 CFR 261.24) or an analogous procedure in which deionized water was used as the extraction medium rather than acetic acid. For samples that contain less than 0.5% solids, the methods are equivalent because no extraction of the sample was performed.
(5) Regulatory levels (in mg/l) shown are those for the hazard criterion presented in this proposal. Highlighted ratios indicate exceedances of the hazard criterion. The regulatory levels, (except pH) are taken from 40 CFR 261.24 (b) and are 100x the MCLs. Constituent concentrations are in units of mg/1. "<" indicates that the concentration was below the detection limit; in these instances, the detection limit was used to compute the average concentration.

EXHIBIT 5.—SLAG FROM PRIMARY LEAD SECTOR

Plant	Source (1)	Page No.	Sample I.D. (2)	Waste type (3)	EP/H20 (4)		Constituents, concentrations, regulatory levels, and ratios (5)								
							Percent solids	pH <1,>13.5	As 5	Ba 100	Cd 1	Cr 5	Pb 5	Hg 0.2	Se 1	Ag 5
A	PEI	5-19	DQ230W	Granulated furnace slag—Active piles.	H20		ND	NA	<0.004	<0.3	0.024	<0.002	0.115	<0.0007	<0.002	<0.03
A	PEI	5-19	DQ231W	Granulated furnace slag—Inactive piles.	H20		ND	NA	<0.004	<0.3	0.77	<0.002	3.02	<0.0002	<0.002	<0.03
A	PEI	5-19	DQ232W	Granulated furnace slag—Active piles.	H20		ND	NA	<0.004	<0.3	0.24	<0.002	0.318	0.0003	<0.002	<0.03
						Avg			<0.004	<0.3	0.4	<0.002	1.2	0.0004	<0.002	<0.03
						Avg./Reg. Level.			<0.0008	<0.003	0.4	<0.0004	0.2	0.002	<0.002	<0.006
B	PEI	5-19	DQ233W	Granulated furnace slag—Inactive piles.	H20		ND	NA	<0.004	<0.3	0.14	<0.002	0.14	<0.0002	<0.002	0.03
B	PEI	5-19	DQ234W	Granulated furnace slag—Active piles.	H20		ND	NA	<0.004	<0.3	0.059	0.005	0.027	<0.0002	<0.002	<0.03
						Avg.			<0.004	<0.3	0.1	0.004	0.08	<0.0002	<0.002	0.03
						Avg./Reg. Level.			<0.0008	<0.003	0.1	0.0007	0.02	<0.001	<0.002	0.006

EXHIBIT 5.—SLAG FROM PRIMARY LEAD SECTOR—Continued

Plant	Source (1)	Page No.	Sample I.D. (2)	Waste type (3)	EP/H20 (4)		Constituents, concentrations, regulatory levels, and ratios (5)								
							Percent solids	pH <1,>13.5	As 5	Ba 100	Cd 1	Cr 5	Pb 5	Hg 0.2	Se 1	Ag 5
C	PEI	5-19	DQ715W	Granulated furnace slag—Active piles.	H20		ND	NA	<0.002	0.8	5.02	0.005	2.2	<0.0007	0.004	<0.04
C	PEI	5-19	DQ716W	Granulated furnace slag—Active piles.	H20		ND	NA	<0.002	0.3	2.32	<0.002	1.83	0.0009	<0.004	<0.04
C	PEI	5-19	DQ717W	Granulated furnace slag—Inactive piles.	H20		ND	NA	<0.002	0.2	0.17	<0.002	0.063	0.0039	<0.004	<0.04
						Avg.			<0.002	0.4	2.5	0.003	1.4	0.002	0.004	<0.04
						Avg./Reg. Level.			<0.0004	0.4	2.5	0.0006	0.3	0.01	0.004	<0.008
D	PEI	5-20	DR076	Hot dumped blast furnace slag.	H20		ND	NA	0.28	<0.8	0.12	<0.002	0.12	0.0007	0.008	<0.03
D	PEI	5-22	DR077	Dezinced slag ...	H20		ND	NA	0.31	<0.8	0.025	0.005	0.16	0.0013	<0.004	<0.03
D	PEI	5-22	DR078	Dezinced slag ...	H20		ND	NA	0.026	<0.8	0.053	<0.002	0.15	<0.0006	<0.004	<0.03
						Avg.			0.2	<0.8	0.07	0.003	0.1	0.0009	0.005	<0.03
						Avg./Reg. Level.			0.04	<0.008	0.07	0.0006	0.03	0.004	0.005	<0.006
E	PEI	5-20	DR706	Hot dumped blast furnace slag.	H20		ND	NA	1.18	<0.8	0.032	0.01	0.23	0.0029	0.071	<0.03
E	PEI	5-20	DR707	Hot dumped blast furnace slag.	H20		ND	NA	1.13	<0.8	0.005	0.002	0.17	0.0023	0.062	<0.03
						Avg.			1.16	<0.8	0.019	0.006	0.2	0.0026	0.067	<0.03
						Avg./Reg. Level.			0.23	0.008	0.019	0.001	0.04	0.01	0.067	<0.006
F	PEI	5-20	DR949	Hot dumped blast furnace slag.	H20		ND	NA	<0.004	<0.4	0.15	<0.002	0.12	<0.0006	<0.002	<0.03
F	PEI	5-20	DR950	Hot dumped blast furnace slag.	H20		ND	NA	<0.004	0.5	0.061	<0.002	0.071	<0.0006	<0.002	<0.03
F	PEI	5-22	DR951	Dezinced slag ...	H20		ND	NA	<0.004	<0.4	0.006	<0.002	0.011	<0.0006	<0.002	<0.03
F	PEI	5-22	DR952	Dezinced slag ...	H20		ND	NA	<0.004	<0.4	<0.001	<0.002	0.008	<0.0006	<0.002	<0.03
						Avg.			<0.004	0.425	0.05	<0.002	0.05	<0.0006	<0.002	<0.03
						Avg./Reg. Level.			<0.0008	0.00425	0.05	<0.0004	0.01	<0.003	<0.002	<0.006

(1) Overview of Solid Waste Generation, Management and Chemical Characteristics, Primary Lead Smelting and Refining Industry, PEI Associates, Inc., Cincinnati, Ohio, November, 1984.
(2) Sample number provided in the source document.
(3) Description of waste type provided in the source document.
(4) Indicates whether the data provided are for analysis of the sample according to EP toxicity test procedures (40 CFR 261.24) or an analogous procedure in which deionized water was used as the extraction medium rather than acetic acid. For samples that contain less than 0.5% solids, the methods are equivalent because no extraction of the sample was performed.
(5) Regulatory levels (in mg/1) shown are those for the hazard criterion presented in this proposal. Highlighted ratios indicate exceedances of the hazard criterion. The regulatory levels, (except pH) are taken from 40 CFR 261.24(b) and are 100x the MCLs. Constituent concentrations are in units of mg/1. "<" indicates that the concentration was below the detection limit; in these instances, the detection limit was used to compute the average concentration.
NA = Not applicable.
ND = No data available.

EXHIBIT 6.—FURNACE SCRUBBER BLOWDOWN FROM ELEMENTAL PHOSPHORUS PRODUCTION

Plant	Source (1)	Page No.	Sample I.D. (2)	Waste Type (3)	EP/H2O (4)		Constituents, Concentrations, Regulatory Levels and Ratios (5)									
							Percent Solids	pH <1,>13.5	As (5)	Ba 100	Cd (1)	Cr (5)	Pb (5)	Hg 0.2	Se (1)	Ag (5)
1	PEI	126	CL-01	Scrubber Liquids.	EP		ND	2.6	0.016	0.71	3	1.6	0.037	<0.0004	0.045	<0.002
						Avg./Reg. Level.			0.003	0.007	3	0.3	0.007	<0.002	0.045	<0.0004
2	PEI	128	CL-01	Scrubber Liquids.	EP		ND	5.98	0.501	0.26	<0.002	<0.001	0.004	<0.0003	<0.005	<0.002
						Avg./Reg. Level.			0.1	0.003	<0.002	<0.0002	0.0008	<0.002	<0.005	<0.0004

(1) Evaluation of Waste Management for Phosphate Processing, PEI Associates, Inc., Cincinnati, Ohio, August, 1986.
(2) Sample number provided in the source document.
(3) Description of waste type provided in the source document.
(4) Indicates whether the data provided are for analysis of the sample according to EP toxicity test procedures (40 CFR 261.24) or an analogous procedure in which deionized water was used as the extraction medium rather than acetic acid. For samples that contain less than 0.5% solids, the methods are equivalent because no extraction of the sample was performed.
(5) Regulatory levels (in mg/1) shown are those for the hazard criterion presented in this proposal. Highlighted ratios indicate exceedances of the hazard criterion. The regulatory levels, (except pH) are taken from 40 CFR 261.24(b) and are 100x the MCLs. Constituent concentrations are in units of mg/1. "<" indicates that the concentration was below the detection limit; in these instances, the detection limit was used to compute the average concentration.
ND=No data available

EXHIBIT 7—SLAG FROM ELEMENTAL PHOSPHORUS PRODUCTION

Plant	Source (1)	Page No.	Sample I.D. (2)	Waste type (3)	EP/H2O (4)		Constituents, concentrations, regulatory levels and ratios (5)									
							Percent Solids	pH <1,>13.5	As 5	Ba 100	Cd 1	Cr 5	Pb 5	Hg 0.2	Se 1	Ag 5
1	PEI	126	SS-11	Slag solids	EP		ND	NA	0.0033	2.2	<0.02	<0.01	<0.84	<0.0004	<0.004	<0.02
1	PEI	127	SS-61	Slag solids	EP		ND	NA	0.012	2.1	0.035	<0.01	<0.84	<0.0004	<0.004	<0.02
						Avg.			0.008	2.15	0.028	<0.01	<0.84	<0.0004	<0.004	<0.02
						Avg./Reg. Level.			0.002	0.0215	0.028	<0.002	<0.17	<0.002	<0.004	<0.004
2	PEI	129	SS-11	Slag solids	EP		ND	NA	0.0069	0.201	<0.02	0.51	<0.84	<0.0003	<0.005	<0.02
						Avg.			0.007	0.2	<0.02	0.5	<0.84	<0.0003	<0.005	<0.02
						Avg./Reg. Level.			0.001	0.002	<0.02	0.1	0.2	<0.002	<0.005	<0.004
3	PEI	130	SS-11	Slag solids	EP		ND	NA	0.0033	0.3	<0.02	0.06	<0.84	<0.0003	<0.005	<0.02
						Avg./Reg. Level.			0.0007	0.003	<0.02	0.01	<0.2	<0.002	<0.005	<0.004

(1) Evaluation of Waste Management for Phosphate Processing, PEI Associates, Inc., Cincinnati, Ohio, August, 1986.
(2) Sample number provided in the source document.
(3) Description of waste type provided in the source document.
(4) Indicates whether the data provided are for analysis of the sample according to EP toxicity test procedures (40 CFR 261.24) or an analogous procedure in which deionized water was used as the extraction medium rather than acetic acid. For samples that contain less than 0.5% solids, the methods are equivalent because no extraction of the sample was performed.
(5) Regulatory levels (in mg/1) shown are those for the hazard criterion presented in this proposal. Highlighted ratios indicate exceedances of the hazard criterion. The regulatory levels (except pH) are taken from 40 CFR 261.24(b) and are 100× the MCLs. Constituent concentrations are in units of mg/l. "<" indicates that the concentration was below the detection limit; in these instances, the detection limit was used to compute the average concentration.
NA=Not applicable.
ND=No data available.

EXHIBIT 8—PHOSPHOGYPSUM FROM PHOSPHORIC ACID PRODUCTION

Plant	Source (1)	Page No.	Sample I.D. (2)	Waste type (3)	EP/H2O (4)		Constituents, concentrations, regulatory levels and ratios (5)								
							Percent Solids	pH <1,>13.5	As 5	Ba 100	Cd 1	Cr 5	Pb 5	Hg 0.2	Se 1	Ag 5
4	PEI	131	GS-11	Gypsum Solids	EP		ND	NA	0.0033	0.057	0.024	0.058	<0.084	<0.0004	<0.004	0.009
4	PEI	131	GS-61	Gypsum Solids	EP		ND	NA	0.0048	0.04	0.02	0.057	<0.084	0.0004	0.004	<0.002
						Avg.			0.004	0.05	0.02	0.06	<0.084	0.0004	0.004	0.006
						Avg./Reg. Level.			0.0008	0.0005	0.02	0.01	<0.02	0.002	0.004	0.001
5	PEI	132	GS-11	Gypsum Solids	EP		ND	NA	0.0089	0.08	0.018	0.05	0.085	<0.0004	<0.004	0.002
						Avg./Reg. Level.			0.002	0.0008	0.02	0.01	0.02	<0.002	<0.004	0.0004
6	PEI	133	GS-11	Gypsum Solids	EP		ND	NA	0.0021	0.045	0.027	0.09	<0.084	<0.0004	<0.004	0.007
6	PEI	133	GS-61	Gypsum Solids	EP		ND	NA	<0.006	0.067	0.05	0.039	0.1	<0.0004	0.004	0.004
6	PEI	133	GS-81	Gypsum Solids	EP		ND	NA	0.011	0.067	0.063	0.036	0.088	<0.0004	<0.004	0.002
						Avg.			0.006	0.06	0.05	0.06	0.09	<0.0004	0.004	0.004
						Avg./Reg. Level.			0.001	0.0006	0.05	0.01	0.02	<0.002	0.004	0.0009
7	PEI	134	GS-11	Gypsum Solids	EP		ND	NA	0.01	0.085	0.036	0.036	0.087	<0.0004	<0.004	<0.002
						Avg./Reg. Level.			0.002	0.0009	0.04	0.007	0.02	<0.002	<0.004	<0.0004
8	PEI	135	GS-11	Gypsum Solids	EP		ND	NA	<0.006	0.053	0.05	0.087	0.104	<0.0004	<0.005	0.005
8	PEI	135	GS-12	Gypsum Solids	EP		ND	NA	0.0083	0.06	0.036	0.054	<0.08	<0.0004	<0.004	0.27
						Avg.			0.007	0.06	0.04	0.07	0.1	<0.0004	<0.005	0.1
						Avg./Reg. Level.			0.001	0.0006	0.04	0.01	0.02	<0.002	<0.005	0.03
9	PEI	136	GS-11	Gypsum Solids	EP		ND	NA	0.0039	0.095	0.086	0.71	<0.084	<0.0004	<0.004	0.008
						Avg./Reg. Level.			0.0008	0.001	0.09	0.1	<0.02	<0.002	<0.004	0.002
10	PEI	137	GS-11	Gypsum Solids	EP		ND	NA	0.0063	0.072	0.032	0.031	0.084	<0.0004	<0.004	<0.002
10	PEI	137	GS-12	Gypsum Solids	EP		ND	NA	0.0042	0.054	0.012	0.01	<0.084	<0.0004	<0.004	0.007
						Avg.			0.005	0.06	0.02	0.02	0.08	<0.0004	<0.004	0.005
						Avg./Reg. Level.			0.001	0.0006	0.02	0.004	0.02	<0.002	<0.004	0.0009
11	PEI	138	GS-11	Gypsum Solids	EP		ND	NA	0.012	0.63	0.15	0.18	<0.84	<0.0004	<0.004	<0.02
11	PEI	138	GS-31	Gypsum Solids	EP		ND	NA	0.0071	0.55	0.14	0.178	<0.84	<0.0004	<0.004	<0.02
						Avg.			0.01	0.6	0.145	0.2	<0.84	<0.0004	<0.004	<0.02
						Avg./Reg. Level.			0.002	0.006	0.145	0.04	<0.2	<0.002	<0.004	<0.004
12	PEI	139	GS-11	Gypsum Solids	EP		ND	NA	0.014	0.47	0.045	1.4	<0.84	<0.0004	<0.004	<0.02
12	PEI	139	GS-12	Gypsum Solids	EP		ND	NA	0.0086	0.3	0.099	0.13	1.5	<0.0004	<0.004	<0.02
12	PEI	139	GS-31	Gypsum Solids	EP		ND	NA	0.011	0.86	0.048	1.5	<0.84	<0.0004	<0.004	<0.02
						Avg.			0.01	0.5	0.06	1	1	<0.0004	<0.004	<0.02
						Avg./Reg. Level.			0.002	0.005	0.06	0.2	0.2	<0.002	<0.004	<0.004

(1) Evaluation of Waste Management for Phosphate Processing, PEI Associates, Inc., Cincinnati, Ohio, August, 1986.
(2) Sample number provided in the source document.
(3) Description of waste type provided in the source document.
(4) Indicates whether the data provided are for analysis of the sample according to EP toxicity test procedures (40 CFR 261.24) or an analogous procedure in which deionized water was used as the extraction medium rather than acetic acid. For samples that contain less than 0.5% solids, the methods are equivalent because no extraction of the sample was performed.

(5) Regulatory levels (in mg/1) shown are those for the hazard criterion presented in this proposal. Highlighted ratios indicate exceedances of the hazard criterion. The regulatory levels, (except pH) are taken from 40 CFR 261.24(b) and are 100× the MCLs. Constituent concentrations are in units of mg/1. "<" indicates that the concentration was below the detection limit; in these instances, the detection limit was used to compute the average concentration.

NA=Not applicable.
ND=No data available.

EXHIBIT 9.—AIR POLLUTION CONTROL SCRUBBER BLOWDOWN FROM PRIMARY TIN PROCESSING

Plant	Source (1)	Page No.	Sample I.D. (2)	Waste type (3)	EP/H2O (4)		Constituents, Concentrations, Regulatory Levels and Ratios (5)								
							Percent Solids	pH <1,>13.5	As 5	Ba 100	Cd 1	Cr 5	Pb 5	Hg 0.2	Se 1	Ag 5
A	PEI	5-5	DR 092	Scrubber Pond Water.	EP		<0.01	7.79	22.9	6.8	0.002	<0.002	0.01	0.0039	0.053	<0.03
A	PEI	5-7	DR 091	Scrubber Solids.	H2O		ND	ND	8.21	2.2	0.004	<0.002	0.004	0.0006	0.05	<0.03
						Avg.			15.5	4.5	0.003	<0.002	0.007	0.002	0.05	<0.03
						Avg./Reg. Level.			3.1	0.05	0.003	<0.0004	0.001	0.01	0.05	<0.006

(1) Overview of Solid Waste Generation, Management, and Chemical Characteristics, Primary Antimony, Magnesium, Tin and Titanium Smelting and Refining Industries, PEI Associates, Inc., Cincinnati, Ohio, December, 1984.
(2) Sample number provided in the source document.
(3) Description of waste type provided in the source document.
(4) Indicates whether the data provided are for analysis of the sample according to EP toxicity test procedures (40 CFR 261.24) or an analogous procedure in which deionized water was used as the extraction medium rather than acetic acid. For samples that contain less than 0.5% solids, the methods are equivalent because no extraction of the sample was performed.
(5) Regulatory levels (in mg/l) shown are those for the hazard criterion presented int this proposal. Highlighed ratios indicate exceedances of the hazard criterion. The regulatory levels (except pH), are taken from 40 CFR 261.24(b) and are 100x the MCLs. Constituent concentrations are in units of mg/L "<" indicates that the concentration was below the detection limit; in these instances, the detection limit was used to compute the average concentration.
NA=Not applicable.
ND=No data available.

For the reasons set out in the preamble, it is proposed to amend Title 40 of the Code of Federal Regulations as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTES

1. The authority citation for Part 261 continues to read as follows:

Authority: Sections 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (43 U.S.C. 6905, 6912(a) 6921, and 6922).

2. Section 261.4, paragraph (b)(7), is revised to read as follows:

§ 261.4 Exclusions.

37 * * * * *

(b) * * *

(7) Solid waste from the extraction, beneficiation, and processing of ores and minerals (including coal), including phosphate rock and overburden from the mining of uranium ore. For purposes of this paragraph, beneficiation of ores and minerals is restricted to the following activities: crushing, grinding, washing, sorting, sizing, drying, agglomerating, flotation, and heap, dump, tank, vat, and *in-situ* leaching.

(i) The following solid wastes from the processing of ores and minerals are retained within this exclusion:

(A) Slag from primary copper smelting;

(B) Slag from primary lead smelting;

(C) Red and brown muds from bauxite refining;

(D) Phosphogypsum from phosphoric acid production;

(E) Slag from elemental phosphorus production;

(F) furnace scrubber blowdown from elemental phosphorus production.

(ii) The following solid wastes from the procesing of ores and minerals are conditionally retained within this exclusion, pending collection and evaluation of additional data:

(A) Barren filtrate from primary beryllium processing;

(B) Raffinate from primary beryllium processing;

(C) Bertrandite thickener sludge from primary beryllium processing;

(D) Process wastewater from primary cerium processing;

(E) Ammonium nitrate process solution from primary lanthanide processing;

(F) Roast/leach ore residue from primary chrome ore processing;

(G) Gasifier ash from coal gasification;

(H) Cooling tower blowdown from coal gasification;

(I) Process wastewater from coal gasification;

(J) Bleed electrolyte from primary copper refining;

(K) Process wastewater from primary copper smelting/refining;

(L) Slag tailing from primary copper smelting;

(M) Calcium sulfate wastewater treatment plant sludge from primary copper smelting/refining;

(N) Furnace off-gas solids from elemental phosphorus production;

(O) Process wastewater from elemental phosphorus production;

(P) Fluorogypsum from hydrofluoric acid production;

(Q) Air pollution control dust/sludge from iron blast furnaces;

(R) Iron blast furncace slag;

(S) Process wastewater from primary lead smelting/refining;

(T) Air pollution control scrubber wastewater from light weight aggregate production;

(U) Wastewater treatment sludge/solids from light weight aggregate production;

(V) Process wastewater from primary magnesium processing by the anhydrous process;

(W) Process wastewater from primary selenium processing;

(X) Process wastewater from phosphoric acid production;

(Y) Wastes from trona ore processing;

(Z) Basic oxygen furnace slag from carbon steel production;

(AA) Leach liquor from primary titanium processing;

(BB) Sulfate processing waste acids from titanium dioxide production;

(CC) Sulfate processing waste solids from titanium dioxide production;

(DD) Chloride processing waste acids from titanium and titanium dioxide production;

(EE) Chloride processing waste solids from titanium and titanium dioxide production;

(FF) Blowdown from acid plants at primary zinc smelters; and

(GG) Process wastewater from primary zinc smelting/refining.

* * * * *

[FR Doc. 89-9125 Filed 4-14-89; 8:45 am]
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Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**

In the **List of Public Laws** printed in the Federal Register on April 13, 1989, S. 20, Public Law 101-12, was incorrectly printed as S. 201. It should read as follows:

S. 20/Pub. L. 101-12

Whistleblower Protection Act of 1989; 103 Stat. 16; 20 pages) Price: $1.00

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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500–End	24.00	Jan. 1, 1988
11	10.00	[2] Jan. 1, 1988
12 Parts:		
1–199	11.00	Jan. 1, 1988
200–219	10.00	Jan. 1, 1988
220–299	14.00	Jan. 1, 1988
300–499	13.00	Jan. 1, 1988
500–599	18.00	Jan. 1, 1988
600–End	12.00	Jan. 1, 1988
13	20.00	Jan. 1, 1988
14 Parts:		
1–59	21.00	Jan. 1, 1988
60–139	19.00	Jan. 1, 1988
140–199	9.50	Jan. 1, 1988
200–1199	20.00	Jan. 1, 1988
1200–End	12.00	Jan. 1, 1988
15 Parts:		
0–299	10.00	Jan. 1, 1988
300–399	20.00	Jan. 1, 1988
400–End	14.00	Jan. 1, 1988
16 Parts:		
0–149	12.00	Jan. 1, 1988
150–999	13.00	Jan. 1, 1988
1000–End	19.00	Jan. 1, 1988
17 Parts:		
1–199	14.00	Apr. 1, 1988
200–239	14.00	Apr. 1, 1988
240–End	21.00	Apr. 1, 1988
18 Parts:		
1–149	15.00	Apr. 1, 1988
150–279	12.00	Apr. 1, 1988
280–399	13.00	Apr. 1, 1988
400–End	9.00	Apr. 1, 1988
19 Parts:		
1–199	27.00	Apr. 1, 1988
200–End	5.50	Apr. 1, 1988
20 Parts:		
1–399	12.00	Apr. 1, 1988
400–499	23.00	Apr. 1, 1988
500–End	25.00	Apr. 1, 1988
21 Parts:		
1–99	12.00	Apr. 1, 1988
100–169	14.00	Apr. 1, 1988
170–199	16.00	Apr. 1, 1988
200–299	5.00	Apr. 1, 1988
300–499	26.00	Apr. 1, 1988
500–599	20.00	Apr. 1, 1988
600–799	7.50	Apr. 1, 1988
800–1299	16.00	Apr. 1, 1988
1300–End	6.00	Apr. 1, 1988
22 Parts:		
1–299	20.00	Apr. 1, 1988
300–End	13.00	Apr. 1, 1988
23	16.00	Apr. 1, 1988
24 Parts:		
0–199	15.00	Apr. 1, 1988
200–499	26.00	Apr. 1, 1988
500–699	9.50	Apr. 1, 1988
700–1699	19.00	Apr. 1, 1988
1700–End	15.00	Apr. 1, 1988
25	24.00	Apr. 1, 1988
26 Parts:		
§§ 1.0-1–1.60	13.00	Apr. 1, 1988
§§ 1.61–1.169	23.00	Apr. 1, 1988
§§ 1.170–1.300	17.00	Apr. 1, 1988
§§ 1.301–1.400	14.00	Apr. 1, 1988
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§§ 1.641–1.850	17.00	Apr. 1, 1988
§§ 1.851–1.1000	28.00	Apr. 1, 1988
§§ 1.1001–1.1400	16.00	Apr. 1, 1988
§§ 1.1401–End	21.00	Apr. 1, 1988
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30–39	14.00	Apr. 1, 1988
40–49	13.00	Apr. 1, 1988
50–299	15.00	Apr. 1, 1988
300–499	15.00	Apr. 1, 1988
500–599	8.00	[4] Apr. 1, 1980
600–End	6.00	Apr. 1, 1988
27 Parts:		
1–199	23.00	Apr. 1, 1988
200–End	13.00	Apr. 1, 1988
28	25.00	July 1, 1988

Title	Price	Revision Date
29 Parts:		
0–99	17.00	July 1, 1988
100–499	6.50	July 1, 1988
500–899	24.00	July 1, 1988
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1926	10.00	July 1, 1988
1927–End	24.00	July 1, 1988
30 Parts:		
0–199	20.00	July 1, 1988
200–699	12.00	July 1, 1988
700–End	18.00	July 1, 1988
31 Parts:		
0–199	13.00	July 1, 1988
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34 Parts:		
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36 Parts:		
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38 Parts:		
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] No amendments to this volume were promulgated during the period Jan. 1, 1988 to Dec. 31, 1988. The CFR volume issued January 1, 1988, should be retained.

[3] No amendments to this volume were promulgated during the period Jan. 1, 1987 to Dec. 31, 1988. The CFR volume issued January 1, 1987, should be retained.

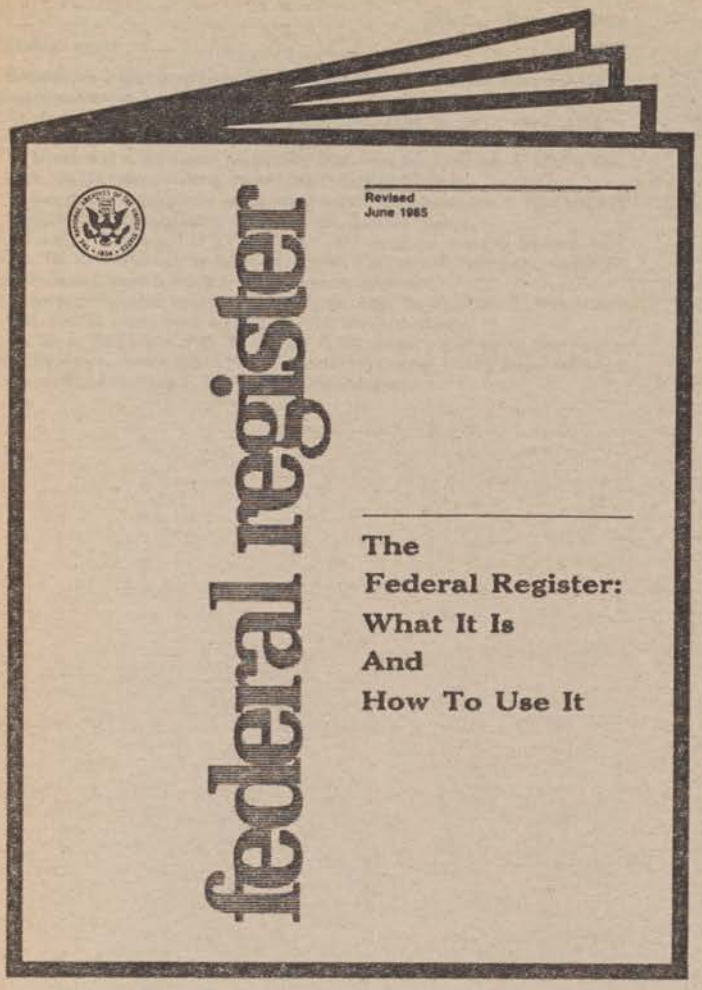
[4] No amendments to this volume were promulgated during the period Apr. 1, 1980 to March 31, 1988. The CFR volume issued as of Apr. 1, 1980, should be retained.

[5] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[6] No amendments to this volume were promulgated during the period July 1, 1986 to June 30, 1988. The CFR volume issued as of July 1, 1986, should be retained.

[7] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

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